



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 14.12.2021
CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Crl.O.P.No.23361 of 2017
and
Crl.M.P.Nos.13586 & 13587 of 2017

D.S.Ramalingam

... Petitioner

Vs.

M/s.K.P.Textiles (CBE) Pvt. Ltd.,
Represented by its Power of Attorney,
Mathan Murugan,
4/237, Karanampettai (P.O.),
Near Sullur,
Coimbatore - 641 402.

... Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.88 of 2011 pending on the file of Judicial Magistrate, Fast Track Court - I (at Magistrate Level), Coimbatore and quash the same.

For Petitioner : Mr.N.P.Kumar

For Respondent : Ms.Yogalakshmi
for M/s.P.Mahesh Kumar

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.88 of 2011 pending on the file of Judicial Magistrate, Fast Track Court - I (at Magistrate Level), Coimbatore, for the offence under Section 138 of the Negotiable Instruments Act.

2.The case of the complainant is that the complainant's company is doing textile business and Mr.Mathan Murugan was working as Quality Control In-charge and acted as a Power Agent of the complainant's company. The accused firm was into business with the complainant's company and on account of the business transaction, the accused firm owed a total outstanding sum of Rs.74,71,021/- to the complainant company. Thereafter, the accused had paid a part of the amount and towards the



balance amount, the accused had issued seven cheques totalling to Rs.35 Lakhs. When the cheques were presented by the complainant for encashment, the same were returned unpaid for the reason "Exceeds arrangements". The complainant sent a legal notice dated 08.12.2020 to the accused and the accused received the same on 11.12.2020, but neither replied nor repaid the amount. Therefore, the complainant has initiated prosecution against the accused for the offence under Section 138 of the Negotiable Instruments Act.

3.The main ground on which the quashment is sought for by the learned counsel for the petitioner is that, though the cause title of the complaint indicates the name of the company first, in the long cause title, the name of the Power Agent, viz., Mr.Mathan Murugan is shown initially and not the name of the company. Therefore, the complaint filed by the said Mr.Mathan Murugan in his own capacity, is not maintainable and is liable to be quashed.

4.Heard the learned counsel on either side and perused the entire materials available on record.

5.At the outset, I am unable to persuade myself to accept the submissions of the learned counsel for the petitioner. Mentioning the name of the Power Agent initially, that too, in the long cause title of the complaint, cannot be a valid ground to quash the entire complaint. Moreover, on a perusal of the complaint, it is seen that the issues are factual and triable issues, which have to be decided only by way of a full fledged trial and not otherwise under Section 482 of Code of Criminal Procedure.

6.In such view of the matter, this Court is of the view that, quashing of the case cannot be considered at this point of time. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Criminal Miscellaneous Petitions are closed.

7.It is for the petitioner to take all his defence before the trial Court. The petitioner/accused is directed to appear before the trial Court within two weeks from the date of receipt of a copy of this order and file an application under Section 436 of Code of Criminal Procedure. On such filing of the application, the trial Court is directed to release the petitioner on bail on the same day on he executing a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) each with two sureties. If thereafter, he absconds, a fresh FIR can be registered under Section 229-A of the Indian Penal Code.



8. At this juncture, the learned counsel appearing for the petitioner seeks indulgence of this Court to grant an order dispensing with the personal appearance of the petitioner. Accordingly, the personal appearance of the petitioner before the trial Court is dispensed with, except for receipt of copies, answering the charges, questioning under Section 313 Cr.P.C., passing of judgment, or on any other date as may be required by the trial Court.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mkn
To

The Judicial Magistrate,
Fast Track Court - I (at Magistrate Level),
Coimbatore.

+1 cc to M/s.Wallicliffs Law Firm, Advocate Sr.NO. 66514
CrI.O.P.No.23361 of 2017

RSV(CO)
A.SK(03.01.2022)