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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2021

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Crl.O.P.No.25078 of 2017

and

Crl.M.P.Nos.14440, 14441 & 16614 of 2017

B.Mohana

Vs.

... Petitioner

1. TVS Motor Company Ltd.,
Represented by its Authorised Signatory,
Jayalakshmi Estates,
No.29, Haddows Road, Chennai - 600 006
Also at
No.37, 1st Floor,
West Brindavanam,
Puduchery.
2. M/s.VRV Agency,
No.9/9, Padmapuram Village,
Walajah Road,
Sholingur,
Tamil Nadu.
3. K.V.Balamurugan,
Managing Partner,
No.9/9, Padmapuram Village,
Walajah Road,
Sholingur,
Tamil Nadu.
Also residing at
No.2, Murugappan Street, Stuartpet, Arakkonam,
Vellore District,
Tamil Nadu.
4. K.Vadivelu
Partner,
Having office at
M/s.VRV Agency,
No.9/9, Padmapuram Village,
Walajah Road,
Sholingur, Tamil Nadu.



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Also at
Plot No.96, New Door No.604/337,
Old Door No.2/337, 6th Street,
Venkatesapuram,
Perumachi,
Arakonam

... Respondents

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records and quash the complaint in C.C.No.1895 of 2017 on the file of XX Metropolitan Magistrate Court, Ripon Building at Chennai, insofar as the petitioner/3rd accused is concerned.

For Petitioner : Mr.K.Kannan

For R1 : Mr.S.Rajendrakumar

R2 to R4 : Notice sent - Service awaited

O R D E R

This Criminal Original Petition has been filed to quash the complaint in C.C.No.1895 of 2017 on the file of XX Metropolitan Magistrate Court, Chennai.

2.The petitioner is charged for the offence under Section 138 of the Negotiable Instruments Act. The petitioner is the 3rd accused.

3.The case of the complainant is that the complainant is into the business of manufacturing and marketing of powered two and three-wheelers and their automotive spare parts. The 1st accused company is one of the Dealers of the complainant. The present petitioner/A3 is the active Partner of the 1st accused firm and is responsible for and in-charge of the day-to-day affairs of the 1st accused firm. On account of business transactions, a sum of Rs.30,52,105/- was due from the 1st accused firm to the complainant. Towards the liability, the 1st accused issued a cheque dated 23.01.2016 drawn on Indian Overseas Bank, Sholingur Branch, for a sum of Rs.29,04,288/-. When the same was presented by the complainant for encashment, it was returned unpaid with an endorsement "Cash Credit Account was closed on 17.02.2015". After complying with the mandatory provisions, the complainant has initiated prosecution against the accused for the offence under Section 138 of the Negotiable Instruments Act.



4.The main ground urged by the learned counsel for the petitioner/A3 before this Court is that the present petitioner/A3 retired from the A1 firm on 04.04.2015 and therefore, he was not active in-charge of the A1 firm when the impugned cheque was issued, i.e. on 23.01.2016. In support of his submission, the learned counsel has produced a photocopy of the entries in the Register of Firms to show that the present petitioner/A3 has retired from the A1 firm as early as on 04.04.2015 itself.

5.Per contra, the learned counsel for the 1st respondent/complainant disputed the alleged retirement deed and submitted that the petitioner/A3 was actively participating in the day-to-day affairs of the A1 firm at the relevant point of time when the cheque was issued.

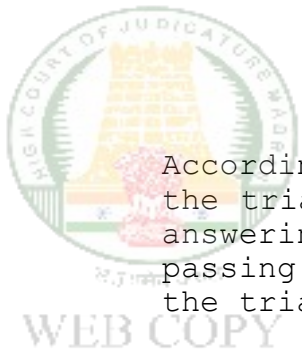
6.Heard the learned counsel on either side and perused the materials available on record.

7.At the outset, I am unable to persuade myself to accept the submissions of the learned counsel for the petitioner for the simple reason that the alleged Retirement Deed itself was registered only on 17.03.2016. Therefore, whether, on the date of issuance of cheque i.e., on the date of transaction, the petitioner was active in-charge of the A1 firm, or not, is a matter of evidence, which has to be decided by the trial Court by appreciation of evidence. Moreover, disputed facts also cannot be gone into by this Court while exercising jurisdiction under Section 482 Cr.P.C. In such view of the matter, it is open to the petitioner to establish all his defence before the trial Court. This Court is not inclined to quash the complaint at this stage.

8.Therefore, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

9.The trial Court shall expedite the trial and dispose the matter within a period of three months from the date of receipt of a copy of this order.

10.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

True Copy//

Sub Assistant Registrar

mkn

To

The XX Metropolitan Magistrate,
Allikulam, Chennai.
(Ripon Building)

+1cc to Mr.S.Rajendrakumar, Advocate, S.R.No.65756

Cr1.O.P.No.25078 of 2017

NSK 23/12/2021