IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.Nos.2822 and 2825 of 2020
and
Crl.M.P.Nos.1697, 1698, 1700 and 1702 of 2020

Arun ...Petitioner/Accused in both Crl.O.Ps

Vs.

Murugesan
...Respondent/Complainant in Crl.O.P.No.2822 of 2020

Mohanraj
...Respondent/Complainant in Crl.O.P.No.2825 of 2020

Prayer in Crl.O.P.No.2822 of 2020: This Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the proceedings in STC Nos.181 of 2019, pending on the file of the Fast Track Judicial Magistrate No.II, Erode.

Prayer in Crl.O.P.No.2825 of 2020: This Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the proceedings in STC Nos.184 of 2019, pending on the file of the Fast Track Judicial Magistrate No.II, Erode.

For Petitioner in both Crl.O.Ps : Mr.N.Umapathi

For respondent in Crl.O.P.No.2822 of 2020 : No appearance

For respondent in Crl.O.P.No.2825 of 2020 : Mr.C.Ramkumar

COMMON ORDER

These Criminal Original Petitions are filed to quash the proceedings in STC Nos.181 and 184 of 2019, pending on the file of the Fast Track Judicial Magistrate Court, No.II, Erode.

2. Heard both sides and perused the materials available on record.

3. The respondents lodged a complaint against the petitioner alleging that the petitioner and two other friends including the respondents, started M/s.Vallis International Trading Private Limited, at Singapore and India. It was started to carry on snacks export business. It was mutually agreed between all the four Directors that initial investment for the business shall be done on equal percentage. Accordingly, each partner invested around Rs.5,00,000/- in which, the petitioner was in charge of Singapore business and he had introduced one Somasundaram, son of Pattappan to be a business partner in Singapore. The respondents and other Directors had obtained several loans from third parties and invested for the business in India. While that being so, the respondents and two other Directors have despatched two consignments, worth about Rs.20,00,000/- from India to Singapore. The respondents received the said consignments at Singapore and did business with the said Somasundaram. The respondents and other two Directors had also transferred a sum of Rs.8,50,000/- to the petitioner's Bank Account for business purpose. However, the petitioner has failed to repay the said amount to the complainant and issued a cheque in order to repay the said amount. It was presented for collection and the same was returned as dishonoured for the reason that “payment stopped by drawer”. Thereafter, the respondents issued legal notice and lodged the complaint.

4. The learned counsel for the petitioner in both the cases, admitted that the respondents and other Directors of the Company called M/s.Vallis International Trading Private Limited. Though the alleged cheque was issued in personal capacity of the petitioner herein, the respondents failed to add other Directors of the Company as accused and failed to issue any Statutory Notice to the other Directors, since the amount was received by the Directors of the Company at Singapore. Therefore, without adding the other Directors of Company as accused, the complaint is not maintainable as against the petitioner alone. He also raised another ground that the alleged cheque was stolen and presented for collection. With regard to the same, the petitioner lodged a complaint and the same has been registered in Crime No.45 of 2019 for offences under Sections 380, 467, 468, 471, 506(i) of IPC as against the respondents and two others. Therefore the alleged complaint cannot be sustained as against the petitioner alone.

5. On a perusal of the complaint, it revealed that the cheque dated 24.01.2019 was issued by the petitioner on his personal capacity. Admittedly, it was not issued on behalf of Company. Even the case of the respondents is that the

respondents, along with two other Directors, had sent materials and also transferred the cash to the tune of Rs.8,50,000/-. The petitioner is looking after the company at Singapore with one Somasundaram , and therefore, on receipt of the materials, and he in order to re-pay the said amount, issued cheque in his personal capacity. Therefore, the respondents need not to add the Company and other Directors as accused. Hence, the complaint is very much maintainable as against the petitioner alone. Insofar as the other grounds raised by the petitioner are concerned, only after the receipt of the statutory notice issued by the respondents, the petitioner lodged the complaint and the same has been registered as against the respondents and two others. Therefore, it is nothing but only an after thought. That apart, those grounds are mixed question of fact and can be considered only during trial.

6. Therefore, this court finds no ground to quash the proceedings initiated by the respondents in both the petitions.

7. In fine, this Criminal Original Petition stands dismissed. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

nti/ata

To

The Fast Track Judicial Magistrate Court- No.II,
Erode.

+1cc to Mr.C.Ramkumar, Advocate SR. No. 35080
+1cc to Mr.N.Umapathi, Advocate SR. No. 36023

Crl.O.P.Nos.2822 and 2825 of 2020

GPL (CO)
PR (26/07/2022)