



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2022

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P.Nos.2123 & 2143 of 2019
and
Crl.M.P.Nos.1335 & 1352 of 2019

Mrs.Pooja Madaiah
Director,
M/s.Spencers Travel Service Ltd.,
Sudharashan Building, 6th Floor,
No.27, Whites Road, Royapettah
Chennai 600 014.

...Petitioner in both Crl.O.P.Nos.

Vs.

Mr.Khimraj Sakariya, HUF,
Rep.by its Karta
Mr.Khimiraj Sakariya
Rep.by his Power Agent
Mr.Jitendra G.Davey.

...Respondent in Crl.O.P.No.2123/2019

M/s.Nakoda Traders
Rep.by its Partner
Mr.Bhawesh Kiran.

...Respondent in Crl.O.P.No.2143/2019

COMMON PRAYER: Criminal Original Petitions had been filed under Section 482 of Cr.P.C, praying to call for the records in C.C.Nos.1145 & 1194 of 2018 on the file of the learned IV Metropolitan Magistrate, (IV FTC), George Town, Chennai and to quash the same.

For Petitioner in
both Crl.O.P.Nos. : Mr.P.Shiva
for Mr.L.Muralikrishnan

For Respondent
in both Crl.O.P.Nos.: No Appearance



COMMON ORDER

These petitions had been filed to call for the records in C.C.Nos.1145 & 1194 of 2018 on the file of the IV Metropolitan Magistrate, (FTC IV), George Town, Chennai and to quash the same.

2. When the case came up for hearing i.e., on 04.04.2022, it was observed that the name of the Respondent/Complainant was not printed on the cause-list. Therefore, the Petitioner's Counsel was directed to issue fresh notice to the Respondent/Complainant returnable by 25.04.2022.

3. On 25.04.2022, when the case was taken up for hearing, an Affidavit of Service was filed regarding service of notice by private mode. In one of the case, the notice was returned with an endorsement as "party unclaimed. Returned to sender."

4. Today, in the cause-list, the name of the Respondent/Complainant is not printed and printed as "awaiting notice". Along with Affidavit of Service, track consignment records is also enclosed. From the records, it is found that the delivery was confirmed on 09.04.2022. Therefore, notice on the Respondent is to be considered as sufficient notice by this Court.

5. The learned Counsel for the Petitioner submitted that he is ready to argue the case on 25.04.2022. This Court had found that the name of the Respondent/Complainant was not printed in the cause-list. Hence, the case was adjourned to 27.04.2022. Today, inspite of the service of notice, no representation on behalf of the Respondent/Complainant.

6. This Court in the light of the Affidavit of Service filed by the Petitioner through private mode, wherein, track consignment records found that the notice had already been served, but in the cause-list, it is printed as "awaiting notice". Considering the same, the Petitioner was permitted to argue the case. As per the submission of the learned Counsel for the Petitioner, the Petitioner in both the CrI.O.P.Nos.2123 & 2143 of 2019 is same viz., Mrs.Pooja Madaiah, Director, M/s.Spencers Travel Services Ltd., Sudharshan Building, 6th Floor, No.27, Whites Road, Royapettah, Chennai 600 014.



7. It is the submission of the learned Counsel for the Petitioner that she is the Director of the Company by name M/s.Spencers Travel Services Ltd., but she is not involved in the day to day management of the Company. She had not signed any cheque; However, she had been arrayed as Accused in the complaint preferred by the Respondent/Complainant in C.C.Nos.1145 & 1194 of 2018 on the file of the learned Metropolitan Magistrate Court, (FTC IV) George Town, Chennai, wherein the complainants are different.

8. It is the contention of the Petitioner that the cheque was returned not for "insufficient funds", but for, "stop payment". Further, the learned Counsel for the Petitioner denying the averments in the complaint regarding the liability and submitted that the first Accused is the Company, which had borrowed money from M/s.Jeneshwar Capital & Groups, where the Petitioner's Company M/s.Spencers Travel Services Ltd., had borrowed a sum of Rs.5 Crores. At the time of availing the loan, they had executed the promissory note and handed over the blank cheque to M/s.Jeneshwar Capital & Groups. Subsequently, they had repaid the entire dues, but the cheque that was handed over to M/s.Jeneshwar Capital & Groups, was filled up and presented in the Bank. After repaying the entire dues, the Petitioner had filed a suit in O.S.No.4579 of 2016 on the file of the learned VI Assistant City Civil Court, Chennai and sought injunction. The learned Counsel for the Petitioner invited attention of this Court to the typed set of papers, wherein, list of documents in the complaint along with cheque No.433856 was enclosed.

9. M/s.Nakoda Traders, the Respondent/Complainant in CrI.O.P.No.2143 of 2019, is also a party No.11 in the suit and to avoid the criminal complaint being filed by the Respondent in this suit, he had already obtained injunction apprehending the misuse of the instrument and handed over the same to the Respondent/Defendant in the suit. The learned counsel for the Petitioner invited the attention of this Court to the typed set of papers wherein the Bank details of the accounts were furnished on the date of the cheque which was returned for stop payment on 26.12.2017. On the same date there were many transactions in the Bank of the Petitioner. There was sufficient funds available in the Bank Account of the Petitioner. Apprehending the misuse of the same, the Petitioner had caused stop payment notice to the Bank. Therefore, the criminal complaint filed against the Petitioner in C.C.Nos.1145 & 1194 of 2018 had to be quashed. There is no specific overt act against the Petitioner and in the complaint also there was no specific averments regarding the overt act. In these circumstances, the learned Counsel for the Petitioner seeks to quash the criminal complaint pending on the file of the learned Metropolitan Magistrate Court (FTC IV) George Town, Chennai.



10. In the light of the above, these Criminal Original Petitions are allowed. Therefore, the criminal complaints in C.C.Nos.1145 & 1194 of 2018 pending on the file of the learned Metropolitan Magistrate Court (FTC IV) George Town, Chennai, are quashed only as against the Petitioner herein. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

dna

To

The IV Metropolitan Magistrate, (FTC IV)
George Town, Chennai.

+3ccs to Mr.P.Shiva, Advocate SR. No. 30142

Cr1.O.P.Nos.2123 & 2143 of 2019
and
Cr1.M.P.Nos.1335 & 1352 of 2019

SSI (CO)
PR (26/05/2022)