



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2022

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P.NO.2148 OF 2019

AND

CRL.M.P.NOS.1356 AND 1357 OF 2019

S.R.Lakshmi Narayanan

... Petitioner

Versus

1. C.Nandan
2. M/s.Sholingur Textiles Limited,
Arakkonam Road,
Sholingur - 631 102,
Vellore District.

(The 2nd respondent is deleted as per order
in Crl.O.P.No.2148 of 2019 and
Crl.M.P.Nos.1356 and 1357 of 2019
dated 29.01.2019)

... Respondents

Prayer: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records relating to the case in C.C.No.92 of 2018 pending trial on the file of the Judicial Magistrate at Sholingur, Vellore District and quash the same with regard to this Petitioner.

For Petitioner : Mr.K.G.Senthil Kumar

For Respondent : No appearance

ORDER

This Criminal Original Petition had been filed seeking to quash the records relating to the case in C.C.No.92 of 2018 pending trial on the file of the Judicial Magistrate at Sholingur, Vellore District.



2. The learned Counsel for the Petitioner submitted that when the case came up for hearing on the earlier occasion, this Court had ordered to issue notice to the Respondents 1 and 2. Private notice was also ordered. Accordingly, he had taken notices. Notice on the first Respondent was returned with an endorsement, "Company closed permanently, return to sender". The second respondent had received it, but, no Counsel or party is present in the Court.

3. The learned Counsel for the Petitioner invited the attention of this Court to the statutory notice copy of which is available in the typed set of papers. The statutory notice was issued only to the company and to the Manager of the company who is an employee of the company and not to the independent Directors of the company. Further, he pointed out that in the notice, the Cheque number is given as Cheque No.743640 for the amount of Rs.1,42,189/-. Whereas, when the complaint is filed, in Paragraph 5 of the complaint, it is stated as,

"In the said notice dated 10.09.2018 the amount for the cheque dated 16.06.2018 was wrongly referred as "Rs.1,42,189/- instead of Rs.1,40,688/- and also instead of Cheque No."743630" "743640" was mentioned".

4. Therefore, the statutory notice itself is defective. In the statutory notice, different Cheque number and different amount is entered. Whereas, in the complaint, its defect is accepted and instead a correct cheque number and correct amount is given. The cause of action for filing a Criminal complaint under Section 138 of Negotiable Instrument Act and regarding Company, Section 142 is also to be followed. Also part of the cause of action is the statutory notice. When the statutory notice itself is defective, in continuation of the said defective notice, the Criminal complaint itself is not maintainable.

5. The learned Judicial Magistrate, Sholinghur had taken cognizance of the evidence without appreciating the provisions under Sections 138 and 142 of Negotiable Instrument Act, specifically with regard to the statutory notice and the averments in the private complaint.

6. The learned Counsel for the Petitioner seeks to quash the criminal complaint in C.C.No.92 of 2018 pending on the file of the learned Judicial Magistrate, Sholinghur.

7. The submissions of the learned Counsel for the Petitioner/Accused in C.C.No.92 of 2018 on the file of the learned Judicial Magistrate, Sholinghur is found acceptable in



the light of the guidelines issued by the Hon'ble Supreme Court of India to the High Court, regarding the exercise of the extraordinary powers vested in the High Court under Section 482 Cr.P.C. The Hon'ble Supreme Court of India had advised to exercise the extraordinary powers only sparingly if there are sufficient materials in the prosecution that cannot be considered as incriminating against the Petitioner in Criminal Original Petition, when there are lack of materials to punish the accused. Here the said guidelines is squarely applicable to the facts in this case.

8. Therefore, the arguments of the learned Counsel for the Petitioner is accepted and in light of the above, this Criminal Original Petition is allowed. In the result, the C.C.No.92 of 2018, pending on the file of the learned Judicial Magistrate, Sholinghur, Vellore District is hereby quashed. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

The Judicial Magistrate,
Sholinghur,
Vellore District.

+1cc to Mr.K.G.Senthil Kumar, Advocate, S.R.No.28544

Cr1.O.P.No.2148 of 2019

and

Cr1.M.P.Nos.1356 and 1357 of 2019

RK(CO)

RLP(20/05/2022)