



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No. 5684 of 2018

and

Crl.M.P.Nos. 2860 & 2861 of 2018

C.Nagarajan,

S/o. S.Chokalingam Pillai

...Petitioner/4<sup>th</sup> Accused

Versus

M/s.J.J.Traders,

Proprietor : M.K.Jamal Mohammed

S/o. M. Kudhpudeen

No.2/3, Bhavani Sathy Connection Road,

B.P.Agraharam, Erode-638 005.

...Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the entire records in pursuant to the criminal proceedings in S.T.C.No.13 of 2018 pending on the file of Court of Judicial Magistrate, Erode / Fast Track Court -II and quash the same.

For Petitioner : Mr.T.P.Prabakaran

For Respondent : Mr.M.Guruprasad

O R D E R

This Criminal Original Petition has been filed to quash the criminal proceedings in S.T.C.No. 13 of 2018 on the file of Judicial Magistrate, Erode/Fast Track Court-II.

2. The case of the petitioner is that he is arrayed as one of the accused in cases pending before the Court of Judicial Magistrate, Erode/Fast Track Court-1 and before the Court of Judicial Magistrate, Erode/Fast Track Court-II, for the offences under Section 138, 141 and 142 of the Negotiable Instrument Act, 1881. The accused Company is running a leather business in the name and style of M/s.Nag India Pvt Ltd., As per the request of the petitioner Company, the complainant Company agreed to supply the ''Wet Blue Cow Hides'' and supplied the same. During the course of business, the accused Company was due and payable to



the respondent Company for the supply made. For which, the 2<sup>nd</sup> accused had issued various cheques on different dates for discharge of the debts arising out of supply. When the said cheques were presented in bank, it was returned and the same was dishonoured by the complainant's Bank with an endorsement of 'Payment Stopped by the Drawers'. Therefore, the respondent has filed the complaints before the Court of Judicial Magistrate, Erode.

3. It is further alleged by the petitioner that the respondent has admittedly not issued any legal notice to the accused as prescribed under the provisions of Negotiable Instruments Act, however, in the complaint, it is stated that a legal notice was duly served to all the Directors including the petitioner herein. Therefore, the complaint filed under Section 138 Negotiable Instrument Act, is legally unsustainable. Hence, challenging the said complaint, the present petition has been filed by the petitioner.

4. The learned counsel appearing for the petitioner submitted that the accused Company had issued a letter to the respondent through their counsel on 29.07.2017, stating that vide order dated 10.07.2017, issued by National Company Law Tribunal, Chennai Bench, the Corporate Insolvency Resolution Process against the accused Company has commenced and hence the 2<sup>nd</sup> accused was unable to honor the post dated cheques in favour of the respondent Company. Further, the complainant has filed the complaint on 21.12.2017, before that on 10.07.2017, the NCLT, Chennai, had initiated insolvency proceedings against the accused Company. On 24.07.2017, a public announcement was issued by the Insolvency Resolution Professional, requesting all the financial creditors of the accused Company to submit their proof of claims and further, on the same day, the accused Company informed the respondent about the commencement of Corporate Insolvency Resolution Process and requested not to present the cheques. In spite of that, the complainant has presented the cheques for collection and filed the complaint as if the accused company failed to settle their debts. In view of the commencement of insolvency proceedings against the accused Company, the complainant is not legally entitled to file a complaint before the Trial Court.

5. The learned counsel appearing for the petitioner further submitted that apart from the above said facts, the petitioner was wrongly arrayed as accused in the above mentioned case. Further, he is not at all a Director of the accused Company and not involved in any affairs of the Company and further not responsible for any act said to have been committed by the accused company. Therefore, the complaint against the petitioner is not maintainable and prays for allowing the



present petition.

6. The learned counsel appearing for the respondent also fairly conceded the submissions made by the learned counsel appearing for the petitioner and they have no serious objection to quash the complaint against the petitioner herein.

7. This Court has considered the rival submissions and also perused the materials available on record.

8. A perusal of materials reveals that the petitioner is not at all a Director of the accused Company and further no specific allegation in the complaint has been made implicating the petitioner as the offender. That being the case, the complaint under Sec. 138 of the Negotiable Act, is wholly misconceived and cannot be sustained. Hence, this Court is inclined to quash the complaint as against the petitioner in the above petition.

9. For the reasons aforesaid, this Criminal Original Petition is allowed and the criminal proceedings in S.T.C.No.13 of 2018 pending on the file of the Court of Judicial Magistrate / Fast Track Court-II, Erode is quashed against petitioner. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rpp/gd

To

1. The Judicial Magistrate /  
Fast Track Court-II, Erode.

2. Do Thro The Chief Judicial Magistrate  
Erode.

+1cc to Mr.T.P.Prabakaran, Advocate, S.R.No.144

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.259

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PVS (CO)

RGA(27/01/2022)