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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No.21259 of 2018

and

Crl.M.P.Nos.11543 &11544 of 2018

K.Gururaj Hebbar

...Petitioner/6th Accused

Versus

M/s. Sangam Chemicals
Represented by its Proprietor,
S.Natarajan,
Son of Sivaramakrishnan,
3, Anna Main Road,
MGR Nagar, Chennai - 600 078

...Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records of the proceedings in C.C.No.4378 of 2016 on the file of the Metropolitan Magistrate (FTC-III), Saidapet and to quash the same as illegal.

For Petitioner : Mr.Sharath Chandran

For Respondent : Private Notice returned
unserved with an
endorsement "left"

O R D E R

This Criminal Original Petition has been filed to call for the records and quash the proceedings in C.C.No.4378 of 2016 on the file of the Metropolitan Magistrate (FTC-III), Saidapet for the offence under Section 138 of the Negotiable Instruments Act, 1991.

2.Heard the learned counsel for the petitioner. Private notice sent to the respondent has been returned with an endorsement "left".

3. The petitioner is arrayed as A6 in C.C.No.4378 of 2016. The allegation in the complaint indicate the complainant is doing Chemical Supplying business. A2 to A6 are the partners of the 1st Accused Company by a partnership deed dated 01.04.2005.



A1 is the customer of the complainant. All the accused had purchased chemicals from the complainant on credit basis on behalf of A1, in which, A2 is a working partner. A2, A3 and A6 are all looking after the conduct and day to day activities of the partnership firm. A2 to A6 are all active participants in the functioning of the said firm and all the accused had jointly and severally purchased materials from the complainant on various occasion.

4. A2 issued a cheque in favour of complainant for a sum of Rs.5,00,000/- dated 11.04.2016 drawn on Axis Bank, Anna Nagar, Chennai towards part payment of dues. When the cheque was presented for encashment, the same was dishonoured for the reason "Funds Insufficient". After complying the statutory provisions, the defacto complainant has filed the complaint for the aforesaid offence.

5. The main contention of the learned counsel for the petitioner is that, the cheque was issued by A2 in his individual capacity. Therefore, merely on the basis of the allegation that the petitioner is a partner, he cannot be prosecuted. However, the partnership firm itself was dissolved as early as on 26.12.2009. Hence, he prayed to quash the entire proceedings.

6. This Court has perused the entire materials available on record. If the cheque is issued by the partnership firm, the liability is binding on all other partners and the partners who are in day today affairs in the firm are vicariously liable. Whereas, in this case, the cheque has not been issued by the partnership firm, only A2 has issued the cheque in his individual capacity. Therefore, at the most, the complaint could be maintainable only against A2 who had issued the cheque. As the cheque is not issued by the partnership firm, making all the other accused vicariously liable for the cheque drawn by the individual is not permissible in the eye of law.

7. In such view of the matter, the prosecution as against A6/petitioner is certainly not maintainable and the same is quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

msv/nr



To

The Metropolitan Magistrate (FTC III)
Saidapet, Chennai - 15.

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+1cc to Mr.Govind Chandrasekhar, Petitioner Advocate, S.R.No.7264

Cr1. O.P. No.21259 of 2018
and
Cr1.M.P.Nos.11543 &11544 of 2018

NR(CO)
RGA(18/02/2022)