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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P.No.16402 of 2018
and
Crl.M.P.No.8444 of 2018

1. Sri Joy Clothing Company
rep. by its Directors
D.Sathishkumar and S.Kavitha
SF.No.14, Lucky Nagar,
Pitsampalayam
Oil Mill Road, Tiruppur 641 602.

2. D.Sathish Kumar, S/o P.Duraisamy
Director & Partner,
M/s.Sri Joy Clothing Company,
No.1, PN Road, Cotton Mill,
Tiruppur-641 602.

3. S.Kavitha, W/o D.Sathish Kumar
Director & Partner,
M/s.Sri Joy Clothing Company,
No.1, PN Road, Cotton Mill,
Tiruppur-641 602.

.. Petitioners/Accused 4 to 6

Versus

M/s.Senator Logistics,
Rep. by its Prop: A.Prasannakumar
No.68, Surya Nagar,
Nesavalur Colony,
Thirumuruganpoondi,
Tiruppur-641 652.

.. Respondent/complainant

PRAYER : Criminal Original Petition (Crl.O.P) filed under Section 482 of the Criminal Procedure Code (Cr.P.C), to call for the records made in C.C.No.180 of 2018 on the file of the Judicial Magistrate No.1, Tiruppur, and quash the same insofar as the petitioners/A4 to A6 are concerned.

For Petitioners : M/s.S.P.Sudalaiyandi
For Respondent : No appearance



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ORDER

This Crl.O.P. has been filed to quash the proceedings in C.C.No.180 of 2018 on the file of the Judicial Magistrate No.1, Tiruppur, against the petitioners/A4 to A6 in respect of the offence under Section 138 of the Negotiable Instruments Act.

2. The crux of the of the complaint is that the de-facto complainant, at the instructions of the accused persons, exported Banians and textile materials to the tune of Rs.20,73,543/- and A2 and A8 gave a cheque dated 15.10.2017 drawn on Bank of Baroda. When the cheque was presented for encashment, the same was dishonoured on the ground of "insufficient funds". Hence, after issuance of the statutory notice, the prosecution has been initiated under Section 138 of the Negotiable Instruments Act.

3. The contention of the learned counsel for the petitioners is that the petitioners are A4 to A6, who are no way connected with A1 to A3. Further, the cheque was issued only by A1-Company (Praveena Creations), whereas A4 is the Director of M/s.Sri Joy Clothing Company, which is a different Company and these petitioners are the Directors of M/s.Joy Clothing Company and they have never issued any Cheque. Hence, the learned counsel for the petitioner submitted that the provisions of Section 138 of the Negotiable Instruments Act will not get attracted in this case as against the petitioners/A4 to A6 and hence, he seeks to quash the complaint.

4. On a perusal of the cheque in question, it is seen that the same was issued by A1-Company. It is to be noted that to maintain a complaint under Section 138 of the Negotiable Instruments Act, the cheque, should have been drawn by a person on an account maintained by him with a Banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, and the cheque should have been returned by the Bank unpaid. Admittedly, in this case, the cheque is not drawn by the petitioners and the cheque was drawn only by the A1-Company, in which A2 and A3 are the Directors.

5. It is not the case of the complainant that the cheque was issued by the first petitioner-Company (A4), which is a different entity (M/s.Sri Joy Clothing Company). Except contending that A1-Company, which is a sister concern, is involved in the business, there is no other averment to the effect that the cheque was issued by A4/Company through its Director. So, the cheque was issued by a different Company and the petitioners herein being the Directors of the other Company (M/s.Sri Joy Company), are no way connected with the issuance of the cheque in question and they cannot be prosecuted.



6. In such view of the matter, the present Crl.O.P. is allowed and the impugned proceedings as against the petitioners/A4 to A6 are quashed. The trial Court shall proceed with the complaint in C.C.No.180 of 2018 and dispose of the same expeditiously as against the remaining accused persons. Consequently, Crl.M.P.No.8444 of 2018 is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

psa/cs

To

1. The Judicial Magistrate No.1, Tiruppur.
2. The Public Prosecutor, High Court, Madras.

Crl.O.P.No.16402 of 2018

PL(CO)

A.SK(08.02.2022)