



Crl.O.P.No.11339 of 2019
and
Crl.M.P.No.5782 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :28.10.2022

Pronounced on :03.11.2022

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.11339 of 2019

and

Crl.M.P.No.5782 of 2019

1.P.Dinesh Kumar

2.Periyasamy

.. Petitioners/Accused No.2 and 3

/versus/

M/s Sriram Enterprises,
Rep.by its Managing Partner,
S.G.Natesan through his Power Agent,
K.Srinivasan
S/o Krishnamoorthy,
3-193-Pudukkottai Extention,
Pottirettipatti,
Namakkal Taluk & District.

.. Respondent/complainant



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Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records in C.C.No.265 of 2017 pending before the Judicial Magistrate No.1, Namakkal, Namakkal District and quash the same.

For Petitioner :Mr.R.Anbukarasu

For Respondent :Mr.S.Lakshmanasamy

ORDER

This Criminal Original Petition is filed by the accused 2 and 3, who face criminal prosecution for the offence under Section 138 of the Negotiable Instruments Act, 1881 in connection with a cheque dated 29.04.2017 drawn in favour of the complainant for Rs.75,000/- signed and issued by the 2nd accused as Managing Partner of the Partnership Firm by name “ M/s Sri Lakshmi Feeds”.

2. The case of the complainant is that, the complainant's firm



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supplied Animal Husbandry Medicines to the petitioners' Firm and towards payment of cost, a cheque for Rs.75,000/- dated 29.04.2017 was issued by the first petitioner, the Managing Partner. The said cheque was presented for collection and the same was returned with an endorsement “funds insufficient”. The complaint was lodged and the same was taken on file in C.C.No.265 of 2017 by the Judicial Magistrate No.1, Namakkal and summons were issued to the accused persons.

3. On receipt of the summons, the petition to quash is filed on the ground that, the Partnership Firm M/s Sri Lakshmi Feeds was incorporated and consisting of Balasubramaniam, Babu Saravanan, S.P.Kumaravel, K.Ramesh, Kanagaraj and P.Dinesh Kumar. The firm was registered in No.935 of 2014 before the Registrar of Firms on 01.11.2014. One Mr.C.Periyasamy, was inducted into the partnership firm on 31.08.2015. Subsequently, on 01.09.2015, except Periyasamy and his son Dinesh Kumar, rest of the partners retired from the firm. Till 11.03.2017 the firm



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was run by its partners Periyasamy and Dinesh Kumar. After that date, the firm was reconstituted, Savitha and her husband Chetan Kumar were induced as partners, Periyasamy and Dinesh Kumar were retired. The creditors of the firm were informed about the retirement deed dated 15.03.2017 and the reconstitution deed dated 16.03.2017, wherein it has been agreed by the parties that all the assets and liabilities of the firm henceforth be taken over by the new partners namely, Savitha and Chetan Kumar. Cibi Chakravarthy who is one of the witnesses to the deeds of retirement and reconstitution knows about this fact.

4. As per the Form-A submitted to the Registrar of Firms on 23.03.2017, the date of reconstitution is mentioned as 15.03.2017. Therefore, the erstwhile partners of the firm Mr.Periyasamy and his son Mr.Dinesh Kumar have no control over the firm M/s Sri Lakshmi Feeds, after 15.03.2017 and not responsible for the liabilities of the firm.



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5. The cheque which is subject matter of the complaint and few more cheques were signed and kept blank, when the first petitioner was maintaining the account of the partnership firm as its Managing Partner. When he retired from the partnership firm on 15.03.2017, due to inadvertence, he did not destroy those cheques. However, informed the Bank not to entertain cheques issued from the account maintained by him as Managing Partner of the firm in which he was the Managing Partner till 14.03.2017. The new partners had misused the blank signed cheques and through the complainant and others attempted to withdraw the money lying in the account of the first petitioner which was freezed on 28.03.2017 on the instruction of the first petitioner. Further, Periyasamy has filed a suit for declaration and injunction in O.S.No.93 of 2017 on the file of the Sub Court, Namakkal and interim injunction is granted on 28.03.2017 restraining the respondents/creditors(the complainant is one of the respondent) from claiming any dues of the partnership firm from Periyasamy who retired on



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15.03.2017. Also through paper advertisement dated 24.03.2017, the retirement from the partnership firm been made known to all general public. In the reply notice dated 19.07.2017, the liability denied and the complainant made known about the reconstitution of the Firm and particulars about the new partners. Despite that the complaint filed on 16.08.2017. Therefore, the private complaint is a malicious prosecution initiated with full knowledge of the retirement and reconstitution of the partnership firm and the interim restrain order. Hence, the petitioners seek quash of the complaint without undergoing the process of trial.

6. It is contended by the learned counsel appearing for the defacto complainant/respondent that post-dated cheque was issued to discharge the liability and after issuing the post-dated cheques, the petitioners appear to have retired from the Partnership Firm. However, since the post-dated cheque was issued prior to the retirement and signed as Managing Partner of the Partnership Firm, the first petitioner being the Managing Partner and



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signatory to the cheque and the second petitioner being co-partner of the firm, both were actively participated in the affairs of the partnership firm. Therefore, they are liable to be prosecuted for issuing the cheque.

7. From the records, it is clear that the cheque which is the subject matter of the complaint in C.C.No.265 of 2017 dated 29.04.2017 is subsequent to the retirement of the petitioners from the partnership firm namely, M/s Sri Lakshmi Feeds. On the petitioners retired from the firm on 15.03.2017, the firm has been reconstituted with new partners and the same has been duly intimated to the General Public by way of Paper publication dated 24.03.2017. The suit in O.S.No.93 of 2017 on the file of the Sub Court, Namakkal filed on 28.03.2017 as against 42 defendants, in which the complainant herein is shown as 24th respondent. In this suit, an interim order restraining the defendants from initiating action for the liability of the partnership firm been issued on 28.03.2017. Whereas, the present complaint has been filed thereafter on 19.07.2017, based on the cheque apparently



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been issued subsequent to the retirement. Hence, the said prosecution is *per se* not maintainable. Since to attract Section 138 of the Negotiable Instruments Act, 1881, the said cheque should have been issued by the drawer from the account maintained by him. Whereas after retirement from the partnership firm M/s Sri Lakshmi Feeds, the petitioners have given a paper publication dated 24.03.2017 intimating the general public about their retirement. More particularly to the statutory notice issued by the complainant, the petitioners have given a reply dated 19.07.2017 intimating about the entire facts and how the cheque has been misused by taking it out from his possession by the present partners. After receipt of the reply notice, without adverting to the averments made in the reply notice, the complaint dated 16.08.2017 has been filed, knowing well that the cheque was subsequent to the retirement of the signatory of the cheque and he has no authority to sign the cheque on behalf of the Firm or to represent the partnership firm, the cheque is presented. Section 138 of the Negotiable Instruments Act, 1881 permits the complaint only in case of cheque issued



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by a person from the account maintained by him. In the case in hand, the subject cheque dated 29.04.2017 apparently not issued by the petitioners from the account maintained by them. Therefore, offence under Section 138 of the Negotiable Instruments Act, 1881 is not attracted. If at all the subject cheque was issued with a criminal intention to cheat the complainant, the remedy is open to the complainant to resort to file a criminal complaint for cheating under IPC and not for the offence under Section 138 of the Negotiable Instruments Act, 1881. **Hence, this Criminal Original Petition is allowed.** Consequently, connected Miscellaneous Petition is closed.

03.11.2022

Index:yes/no
speaking order/non speaking order
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To :
The Judicial Magistrate No.1, Namakkal.



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DR.G.JAYACHANDRAN,J.

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Delivery Order made in
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