IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :28.10.2022

Pronounced on :......11.2022

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.11347 of 2019
and
Crl.M.P.No.5790 of 2019

P.Dinesh Kumar .. Petitioner/Accused No.2

/versus/

M/s Indian Herbs Specialities Pvt.ltd.,
Rep.by its Regional Manager,
Mr.Krishnamoorthy,
S/o Chinnagounder,
Vasanthapuram Post,
Namakkal Taluk and District. .. Respondent/complainant

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records in C.C.No.129 of 2017 pending before the Judicial Magistrate No.I, Namakkal, Namakkal District and quash the same.

For Petitioner :Mr.R.Anbukarasu
For Respondent :No appearance

ORDER

This Criminal Original Petition is filed by the second accused, who faces criminal prosecution for the offence under Section 138 of the Negotiable Instruments Act, 1881 in connection with cheque dated 07.02.2017 drawn in favour of the complainant for Rs.3,57,500/- signed and issued on behalf of the first accused as Managing Partner of the Partnership Firm by name " M/s Sri Lakshmi Feeds".

2. The case of the complainant is that, he is running a business in the name and style of "M.s Indian Herbs Specialities Private Limited" for supplying Herbal Health Products to the Firm. The first accused Partnership Firm "M/s Sri Lakshmi Feeds", represented by its Managing Partner, the second accused (the petitioner herein) used to purchase of Herbal Health Products from the complainant. The subject cheque was issued to discharge the due payable towards the cost of herbal health products sold. On presentation of the cheque dated 07.02.2017, it was returned with memo

dated 10.04.2017 as “Account Blocked”. Statutory Notice to the accused was sent through the Lawyer on 18/04/2017. The said notice returned with an endorsement “Intimation given, not claimed”. The complaint therefore filed under Section 138 of the Negotiable Instruments Act, 1881 on 17/05/2017 with explaining the reason for not filing the complaint within 30 days from the date of cause of action. The complaint was taken on file by the Judicial Magistrate No.1, Namakkal in C.C.No.129/2017 and summons 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 consisting of Balasubramaniam, Babu Saravanan, S.P.Kumaravel, K.Ramesh, Kanagaraj and P.Dineshkumar. The firm was registered in No:935/2014 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 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. The complainant in another case, Cibi Chakravarthy, who is one of the witnesses to the deeds of retirement and reconstitution know 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 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.

5. The cheque which is the subject matter of the complaint and few more cheques were signed and kept blank, when the petitioner, Dinesh Kumar 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 petitioner ,which was freezed on 28/03/2017 on the instruction of the petitioner. Further, Periyasamy has filed suit for declaration and injunction in O.S.No.93/2017 on the file of Sub-Court, Nammakal 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 15/03/2017. Also, through paper advertisement dated 24/03/2017, the

retirement from partnership been made known to all general public. Therefore, the private complaint is a malicious prosecution initiated with full knowledge of the retirement and reconstitution of the partnership firm and the interim restraint order. Hence, the petitioner seeks to quash of the complaint without undergoing the process of trial.

6. The learned counsel appearing for the defacto complainant/respondent submitted that the cheque was issued by the petitioner in the capacity of Managing Partner of the Firm "M/s Sri Lakshmi Feeds". The cheque was issued to discharge the debt incurred towards supply of herbal health products over a period of time. At the time of said transaction, the petitioner was the Managing Partner and he as the authorised signatory for the account maintained by the Partnership Firm, signed and issued the cheque. His retirement from the partnership firm is an internal affair among the partners, which was not made known to do the complainant in the manner known to law. The cheque was issued on

07.02.2017 much prior to the retirement of the petitioner. Therefore, the petitioner cannot claim any immunity from the prosecution just because he retired from the partnership firm, after issuing the cheque. Also the terms of retirement deed between the out going partners and the incoming partners will have no bearing on the bearer of the cheque, who is entitled to recover the money due and payable by the partnership firm.

7. In support of his submission, the learned counsel appearing for the respondent relying upon the judgment of the Hon'ble Supreme Court rendered in ***Syndicate Bank v. M/s R.S.R.Engineering Works reported in 2003 (6) SCC 265*** wherein the Hon'ble Supreme Court has held that the existing liability of the partners in the partnership firm will not get effaced on his retirement. Notwithstanding the retirement of the partner in the firm, the partner will be liable to the third party for any act done by any of the partners, who had acted on behalf of the firm and this liability continues until public notice is given for the retirement. Referring Section 32 of the

Indian Partnership Firm Act, 1932, the Hon'ble Supreme Court held that the liability incurred prior to the dissolution of the firm will continue and will not alter the position of the retiring partner. In paragraph 9 of the said judgment, the Hon'ble Supreme Court has observed as below:-

> "9.There is no a priori presumption to the effect that the creditors of a firm do, on the retirement of a partner, enter into an agreement to discharge him from liability. An adoption by the creditor of the new firm as his debtor does not by any means necessarily deprive him or his rights against the old firm especially when the creditor is not a party to the arrangement and then there is no fresh agreement between the creditor and the newly constituted firm. After the creditor has taken a new security for a debt from a continuing partner, it may be a strong evidence of an intention to look only the continuing partner for the payment due from the firm."

8. In ***Rallis India Limited v. Poduru Vidya Bhusan and others*** reported in [***2011(13) SCC 88]***, the Hon'ble Supreme Court held that whether or not the petitioner was a partner in the firm on the relevant date is question of fact which has to be established in trial and therefore, order

discharging the accused was set aside.

9. Per contra, the learned counsel appearing for the petitioner relying upon the judgment of the Hon'ble Supreme Court rendered in ***DCM Financial Services Limited v. J.N.Sareen and another*** reported ***[(2008) 8 SCC 1]*** which upheld the lower Court judgment of discharging the respondent in a case under Section 138 of NI Act, 1881 for issuance of post-dated cheque which became due for payment after the respondent resigned from directorship and given notice of resignation to the complainant.

10. The facts of the case is straight and simple. The complaint pertaining to the cheque dated 07.02.2017 signed by the petitioner in the capacity of Managing Partner of M/s Sri Lakshmi Feeds. The petitioner has retired from the partnership firm from 15.03.2017 which is reflected in Form-A submitted to the Registrar of Firms. The said cheque was presented 06.04.2017.

11. Thus, it is clear from the records that the subject cheque was issued before retiring from the partnership firm to discharge the liability of the firm. No doubt, the cheque was presented for collection after the retirement, but the same cannot be a ground to quash the complaint without appreciating the evidence in trial whether the retirement exonerates the retiring partner from the liability prior to the retirement and whether the complainant aware of the retirement of the petitioner from the firm being a witness to the retirement deed. Therefore, as far as this petitioner is concerned, since the cheque is issued while the petitioner was the Managing Partner of the partnership firm, there is no infirmity in the complaint which warrants interference under Section 482 of Cr.P.C., to quash the complaint. Hence, **this Criminal Original Petition to quash is dismissed.** Consequently, connected Miscellaneous Petition is closed.

.....11.2022

Index:yes/no

speaking order/non speaking order
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To :

The Judicial Magistrate No.1, Namakkal.

DR.G.JAYACHANDRAN,J.

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Pre-delivery Order made in
Crl.O.P.No.11347 of 2019
and
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