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Crl.O.P.No.14801 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2022

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THE HON'BLE **Dr.JUSTICE G.JAYACHANDRAN**

Crl.O.P.No.14801 of 2019

and

Crl.M.P.No.7244 of 2019

Rizwan Ahmed

... Petitioner

Vs.

M/s.Arunai Products & Services Private Limited,
Rep.by Mr.A.Kranthi Teja
S/o.A.Venkateshwarlu
General Manager

... Respondent

Prayer:- Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to call for the records and to quash the C.C.No.11388 of 2018 on the file of the Fast Track Court-III, Metropolitan Magistrate at Saidapet.

For Petitioner : Ms.Varsha Balasubramanian
For M/s.Subhang P.Nair

For Respondent : Mr.R.Muthukumar
For Mr.R.Lingakumar



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ORDER

This Criminal Original Petition is filed to quash the private complaint filed under Section 138 of Negotiable Instruments Act, on the sole ground that the petitioner is neither the signatory to the cheque nor the company, which committed the alleged offence and arrayed as accused. Hence the requirement under Section 141 of Negotiable Instruments Act, to prosecute the company is not satisfied.

2. On reading the complaint which is impugned, this Court finds that the complaint under Section 138 of Negotiable Instruments Act, launched by M/s.Arunai Products & Services Private Limited represented by Mr.A.Kranthi Teja, General Manager against Mr.Rizwan Ahmed, Chairman and Managing Director of Oren Hydrocarbon Private Limited.

3. The learned counsel for the petitioner/accused contends that the complaint is against an individual. Statutory notice was also issued against the individual and not on the company. The petitioner is neither the signatory to the cheque nor deals with the affairs of the company, more



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particularly, he has nothing to do with the impugned cheque.

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4. Per contra, the learned counsel for the respondent/complainant submits that the petitioner is the Chairman and Managing Director of the company which has issued the cheque and if so described with the complaint, and therefore, the complaint is maintainable. In support of his submissions, the learned counsel for the respondent rely upon the case in ***Bhupesh Rathod Vs. Dayashankar Prasad Chaurasia and another*** reported in ***(2022) 2 Supreme Court Cases 355***.

Section 141 in the Negotiable Instruments Act, 1881 reads as below:

“141 Offences by companies. — (1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:



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[Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation.— For the purposes of this section,

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.]

5. The plain reading of the provisions clearly indicates that if the offence is committed by a company, otherwise if the cheque is drawn from the account maintained by the company and if such cheque gets



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dishonoured, he should be construed by the company. Since the company though juristic body to be represented by a natural person, the signatory of the cheque and whoever is responsible for the conduct of the business of the company, will be held liable to be prosecuted. In the impugned complaint it is stated that the complainant dealing with granite and minerals used to supply goods on credit basis to the accused and in the course of the business, a total sum of Rs.14,00,485/- fell as due and in order to discharge the said due, a cheque was issued for a sum of Rs.14,00,485/- dated 04.07.2018, drawn on Standard Chartered Bank Limited, Rajaji Salai, Chennai by the accused. On presentation of the said cheque for collection, it was returned with an endorsement “payment stopped by the drawer”. Hence after causing statutory notice to the accused, the complaint has been lodged.

6. Perusal of the cheque indicates that it is issued on behalf of M/s.Oren Hydrocarbon Private Limited. There are two signatories to the cheque. The petitioner herein is not any one of the signatories. The statutory notice dated 23.08.2018 sent to the petitioner herein in his



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personal capacity, identifying him as the Chairman and Managing Director of M/s.Oren Hydrocarbon Private Limited is not caused to the company represented by the petitioner or the petitioner as a representative of the company in the judgment relied by the learned counsel for the respondent.

7. The perusal of the complaint and the statutory notice it has held that the complaint filed by the Managing Director on behalf of the company cannot be dismissed on the ground that the name of the Managing Director is mentioned first followed by the post held in company. There is no specific format as to how a company which sues should be described. Therefore, mentioning the name of the Managing Director first followed by the post held by him is not a fundamental defect warranting dismissal. However, this is not the case regarding description of the accused. It is a case of omission to cause notice to the company and prosecuting the company besides the petitioner who is responsible for the management of the company. The sole accused in the complaint is neither a signatory of the cheque nor described as a person responsible for the affairs of the company. In the entire complaint there is no whisper as to



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how this petitioner liable and be prosecuted for the cheque drawn in the name of M/s.Oren Hydrocarbon Private Limited

8. In such circumstances, this Court finds merit in the submissions of the petitioner to quash the complaint. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected Criminal Miscellaneous Petition is also closed. The complaint in C.C.No.11388 of 2018 is quashed.

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Index: Yes/No

Speaking Order/Non Speaking Order

To

The Fast Track Court-III, Metropolitan Magistrate, Saidapet, Chennai.



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