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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2022

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRL.O.P.NO.15744 OF 2019

AND

CRL.M.P.NO.7853 OF 2019

M/s.Shri Sakthi Papers Private Ltd.,  
Rep. by its Director,  
P.Swaminathan,  
195, N.H. Road,  
Coimbatore - 641 001.

... Petitioner

.Vs.

Spire Papers Private Limited,  
Rep. by its Authorised Representative,  
Mr.Dushyant,  
304, 3<sup>rd</sup> Floor Suncity Business,  
Tower Golf Course Road,  
Section 54, Gurgaon - 122 002,  
Haryana.

... Respondent

PRAYER:-

Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.15/2019 pending on the file of the Fast Track Judicial Magistrate Court No.2, Coimbatore and quash the same as not maintainable.

For Petitioner : Mr.N.Ravishankar Vallatharasu

For Respondent : Mr.M.Lulumariam

O R D E R

The petition is filed to call for the records in C.C.No.15 of 2019 pending on the file of Fast Track Judicial Magistrate Court No.II, Coimbatore and quash the same.



2. The respondent/complainant filed a private complaint under Section 200 of Criminal Procedure Code against the petitioner/accused for the offence punishable under Section 138 of The Negotiable Instruments Act, 1881.

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3. The short point canvassed by the learned counsel for the petitioner/accused is that admittedly, the complainant - M/s.Spire Papers Private Limited is only an authorised representative of one M/s.Orient Links Company (L.L.C.), located at Dubai and in fact, there is no privity of contract between the petitioner and the said M/s. Spire Papers Private Limited. The subject cheque was given only to M/s.Orient Links Company Private Limited. Since there is no legally enforceable debt payable to M/s.Spire Papers Private Limited who is the complainant in this case, there can be no prosecution under Section 138 of Negotiable Instruments Act.

3(i) In support of his submission, the learned counsel would also refer to the list of documents annexed to the private complaint wherein, the authorisation issued by M/s.Orient Links Company to the complainant, for collection of due is dated 31.12.2018 whereas, the subject cheque is dated 15.10.2018, which is much prior to the authorisation and submitted that the presentation of the blank cheque after filling of the name of the complainant, when there was no privity of contract is not a legally enforceable debt. According to the complainant, the alleged authorisation from M/s.Orient Links Company was subsequent to the date of issuance of cheque. Therefore, the complaint under Section 138 does not satisfy the required ingredients for prosecution.

4. Per contra, the learned counsel appearing for the respondent/complainant would submit that the complainant herein is the Indian representative of M/s.Orient Links Company (L.L.C.) operating at Dubai. Ever since 08.12.2013, the transactions of M/s.Orient Links company being carried out only through the respondent-complainant namely M/s. Spire Papers Private Limited. The petitioner herein is the dealer in Paper Products and all the business transactions were carried only through M/s.Spire Papers Private Limited and the same has been spoken in the complaint. The authorisation dated 31.12.2018 is the subsequent authorisation letter for the purpose of initiating the criminal proceedings. The respondent/complainant on due authorisation had lodged the complaint and the cheque was issued only to discharge the liability which is enforceable under law. The pleas raised by the petitioner are subject to be tested in the trial and the complainant has already filed proof affidavit and ready to subject himself for cross-examination.



5. On reading the complaint and the averments made in the quash petition, it is seen that the subject cheque, is drawn by the Director of M/s.Shri Sakthi Papers Private Ltd., in favor of M/s.Spire Papers Private Limited to the tune of Rs.90,90,918.63/- dated 15.10.2018. It prima-facie appears that the said cheque was issued to M/s.Spire Papers Private Limited. The statutory notice issued on behalf of M/s.Spire Papers Limited to the petitioner herein discloses the fact that M/s.Spire Papers Limited is the authorising Indian Agent of the Dubai Company and cheque was drawn in its favour by the petitioner herein. After issuing the cheque, the petitioner herein has intimated his bank to stop the payment. Inspite of receipt of the statutory notice dated 28.11.2018, on 29.11.2018 the petitioner herein has chosen not to reply to the notice and the reason for instructing his bank for stop payment, is unknown.

6. Whether on the date of issuance of cheque and on the date of filing the complaint, M/s.Spire Papers Private Limited was the local agent of M/s.Orient Links Company, Dubai, it is a fact to be tested during the course of trial. No summary finding can be issued by invoking power under Section 482 Cr.P.C. Therefore, the quash petition is dismissed, without observing anything regarding the merits of the petitioner's case. Consequently, connected miscellaneous petition is closed.

Sub Assistant Registrar

<https://hcservices.ecourts.gov.in/hcservices/>



To

The Fast Track Judicial Magistrate Court No.2,  
Coimbatore.

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+1cc to Mr.N.Ravishankar Vallatharasu, Advocate, S.R.No.34911  
+1cc to Mr.S.V.Pravin Rathinam, Advocate, S.R.No.34480

CRL.O.P.NO.15744 OF 2019 AND  
CRL.M.P.NO.7853 OF 2019

PM (CO)  
PBS/30/06/2022