



Crl.O.P.No.27859 of 2019

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2022

CORAM

THE HON'BLE Dr.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.27859 of 2019

and

Crl.M.P.Nos.14841 of 2019 & 16826 of 2022

Sri Abhimanyu Gupta

... Petitioner

-Vs.-

M/s.Kaikal Fabrication,
Rep by its Proprietor,
Mr.Saravana Kumar,
S/o.Shanmugam,
Registered Office at
11/C Kumarapalayam Road,
Kasiayampalayam Post,
Annur Taluk,
Coimbatore 641 653.

.. Respondent

Criminal Original Petitions filed under Section 482 of Code of Criminal Procedure to call for the records pertaining in C.C.No.38 of 2019 on the file of the Fast Track Judicial Magistrate Court No.I, Coimbatore and quash the same.

For Petitioner

:Mr.P.Tamilavel

For Respondent

:Mr.S.Sivalinga Kesavan



Crl.O.P.No.27859 of 2019

WEB COPY

ORDER

The Criminal Original Petition has been filed to quash the private complaint instituted under Section 138 of the Negotiable Instruments Act [hereinafter “NI Act”].

2. According to the complainant, the first accused is the partnership firm, which is represented by its partners, who are arrayed as A2 to A5. Four cheques for a sum of Rs.55,72,780/- was issued to the complainant by the first accused firm to discharge the liability, which arose during the sale of garments and on presentation the same were returned with an endorsement “payment stopped by the Drawer”. Hence the complaint. The fourth accused by name Abhimanyu Gupta/petitioner herein has filed this criminal original petition to quash the complaint against him.

3. The petitioner herein seeks to quash the complaint on a short point that he is neither a partner in the first accused firm nor the signatory of the cheque and he never represented the firm at any point of



Crl.O.P.No.27859 of 2019

WEB COPY

time. He, being a 19 years old student studying abroad, is falsely rowed in the criminal complaint with false allegations as he is one of the partners in the first accused firm and the fact that he is neither the partner nor the signatory to the cheque has been made known to the complainant in his reply to the statutory notice sent by the complainant.

4. The learned counsel appearing for the complainant submits that the reply notice of this petitioner was received after the filing of complaint and if he is not a partner to the firm, he has to prove the same in the course of trial. Further the learned counsel submitted that if this Court is convinced that this petitioner is neither the partner nor the signatory to this cheque, that may be observed and this petitioner alone may be exonerated without prejudice to the rights of the complainant to proceed against other accused persons. The learned counsel also prays for the speedy disposal of the trial, which is pending for more than 3 years.



Crl.O.P.No.27859 of 2019

WEB COPY

5. The learned counsel for the petitioner referring the extract from the registration of firm submitted that the first accused/partnership firm in its registration only consists of Chanderpal Gupta/A2 and Purva Gupta/A3 and the subject cheque was signed by A5. Therefore, as far as this petitioner, who is arrayed as A4, there is no indication that he was managing the affairs of the firm and representing the firm at any point of time. Even in the complaint, except the vague allegations that A2 to A5 were representing the first accused firm, there is no specific overt act attributed in the complaint as against this petitioner.

6. In addition, it is also placed on record by the learned counsel for the petitioner that at the relevant point of time, the petitioner was not in India and he was at Australia. To substantiate this point, the visa granted by the Australian Government and the passport of the petitioner was also enclosed.

7. In the light of the above facts, since the complainant has not satisfied the requirements of Section 141 of the NI Act to fix this



Crl.O.P.No.27859 of 2019

WEB COPY

petitioner vicariously liable for the cheque issued by the fifth accused on behalf of the first accused firm, the complaint as against this petitioner is liable to be quashed.

8. As a result, C.C.No.38 of 2019 on the file of Fast Track Judicial Magistrate Court No.1, Coimbatore, is quashed as against the petitioner, who is arrayed as 4th accused. The trial against the other accused shall proceed and get completed within a period of three months from the date of receipt of copy of this order.

9. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are also closed.

23.11.2022

Speaking/Non-speaking order

Index: Yes/No

Internet : Yes/No

nsa



WEB COPY



Crl.O.P.No.27859 of 2019

Dr.G.JAYACHANDRAN.J.,

nsa

To

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

Crl.O.P.No.27859 of 2019
and Crl.M.P.Nos.14841 of 2019
& 16826 of 2022

23.11.2022