

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRL.O.P.NO.26572 OF 2018

AND

CRL.M.P.NO.15300 OF 2018

Kirit Radia

... Petitioner/4<sup>th</sup> Accused

Vs.

M/s.Best Road Carrier,  
represented by its power agent Mr.Amit Bansal  
Chief Executive (Logistics)  
No.699 & 700, P.H.Road,  
Kumbhat Commercial Complex,  
No.15, III Floor, Aminjikai,  
Chennai - 600 029.

... Respondent/Complainant

PRAYER: This Criminal Original Petition has been filed under Section 482 of Cr.P.C, to call for the records in C.C.No.5056 of 2014 pending on the file of the Fast Track Court No.II, Egmore and to quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.D.S.Rajasekaran

For Respondent : Mr.N.Umapathi

ORDER

This Criminal Original Petition has been filed to quash the C.C.No.5056 of 2014, pending on the file of the Fast Track Court No.II, Egmore.

2.The petitioner was arrayed as fourth accused.

3.The learned counsel for the petitioner would contend that there is no culpable action on the part of the petitioner herein/fourth accused and he is only a salaried employer under the first accused Company. Even as per the averments made in

the private complaint filed for the alleged offence under Section 138 of the Negotiable Instruments Act, the petitioner/A4 is said to have been present at the time of handing over the cheque and hence, the petitioner herein cannot be termed as an accused.

4.The learned counsel for the respondent would contend that the respondent has filed a private complaint in C.C.No.5056 of 2014, on the file of the V Metropolitan Magistrate, Egmore, Chennai, under Section 2(d) of Cr.P.C for the alleged offence under Section 138 r/w Section 141 of the Negotiable Instruments Act, in connection with the cheque issued by the first accused Private Limited Company signed by the second accused/Managing Director of the first accused Company after observing certain formalities as stated in the Negotiable Instruments Act.

5.Heard the learned counsels on either side and perused the materials placed on record.

6.On a perusal of the private complaint, the only overt act alleged to have been committed by this petitioner, as averred in the compliant is as follows:

"(8) While at the time of issuing the above cheques the 4<sup>th</sup> accused was also present and the 2<sup>nd</sup> accused said that this time will not face any problem and assured that the cheques issued by the second accused on behalf of the first accused will be honoured."

The said act as alleged by the respondent/complainant as against this petitioner does not attract any offence much less the alleged offence under Section 138 of the Negotiable Instruments Act.

7.Further, it is seen that the petitioner is neither a signatory to the cheques in question nor a beneficiary in the first accused company, but just an paid employee as an Accountant in the Accused Company.

8.In view of the above, I find that the petitioner/A4 is neither a signatory to the cheque in question nor a beneficiary in the first accused Company. The only overt act alleged against the petitioner is that at the time of handing over the cheque in issue, he was present. Hence, I find that the petitioner is not necessary party since he has not committed any criminal act within the charge under Section 138 r/w Section 141 of the Negotiable Instruments Act. Hence, continuation of

criminal proceedings, prosecution against the petitioner/A4 amounts to abuse of process of law.

9.In this view of the matter, this Criminal Original Petition stands allowed and C.C.No.5056 of 2014 pending on the file of the Fast Track Court No.II, Egmore, is quashed only against the petitioner/A4. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

dua

To

The Judge,  
Fast Track Court No.II,  
Egmore.

+1cc to M/s.N.Umapathi, Advocate, S.R.No.40681

+1cc to Mr.D.S.Rajasekaran, Advocate, S.R.No.40214

Crl.O.P.No.26572 of 2018  
and Crl.M.P.No.15300 of 2018

RLD(CO)  
RLP(20/07/2022)