IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 07.04.2022
CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.29933 of 2018 &
Crl.M.P.No.17595 of 2018

B.Jayakrishna
S/o.B.R.R.Mohan Rao ... Petitioner/Accused 2

Vs

1.M.Kamalanathan ...1st Respondent

2.Leelakumar Krishnakumar * ... 2nd Respondent

* The 2nd respondent name was deleted as per order in Crl.O.P.No.29933 of 2018 and Crl.M.P.Nos.17595 and 17596 of 2018 dated 20.12.2018.

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C to call for the records of CC No.8161 of 2017, pending on the file of the Metropolitan Magistrate FTC – II, Egmore, and quash the same.

For Petitioner : M/s.S.P.Arthi

For Respondent : Mr.A.Balaji
for M/s.Sri Balaji Associates

O R D E R

The second accused in C.C.No.8161 of 2017 facing trial on the private complaint filed by the respondent under Section 138 of Negotiable Instruments Act, pending trial before Metropolitan Magistrate Fast Track Court – II, Egmore, Chennai has filed this quash application.

2. The gist of the complaint is that the petitioner and A1 in this case are engaged in the business of film production and allied business jointly as partners, of "Capricon Movies". They were introduced to the respondent by a common friend, in the course of the business, the petitioner and the other accused sought a loan of Rs.23 lakhs for their business. On their request, the respondent granted loan of Rs.23 lakhs and the same was transferred through RTGS. The accused promised to repay the loan with interest at the rate of 24% p.a. within a stipulated period. Except for paying interest of Rs.50,000/- in the month of January 2015 and another 50% in the month of June 2016, neither paid the principal nor the interest. After continuous follow up, the accused issued a

cheque for Rs.10 lakhs as part payment by way of cheque drawn on State Bank of India Adyar Branch, bearing No.029053 dated 07.06.2017. Though the cheque was in the Joint Account name of both the accused, the cheque was signed by A1. Thereafter, the cheque when presented by the complainants in ICICI Bank Anna Nagar on 08.06.2017. The cheque was returned with an endorsement “insufficient funds”. Thereafter, the statutory notice was issued on the petitioner / 2nd accused. The notice was received on 19.06.2017 and thereafter no payment made. Hence, the complaint .

3.The contention of the petitioner is that A1 in this case was introduced to him through a common friend / acquaintance, A1 offered to help him in administrating the properties and accounts of the petitioner. The petitioner authorized A1 to look after his estates. The petitioner and A1 never engaged in partners and carried on any business jointly, both of them are independent to each other. For looking after the properties, and the estate of the petitioner, a Joint Account was opened in the SBI Adyar Branch in A/c No. 20015951019. The Account was never in the name of any business entity. The petitioner came to know that the actual income that was due to him was being diverted from the Joint Account by A1. The petitioner written to the bank on 17.06.2016 to delete the petitioner's name from the account as Joint Account holder, the same was also effected by the Bank and this is confirmed by the Bank. The petitioner and the family was groping from the treachery committed by A1 and further they also took steps to find out what are the other misdeeds committed by A1 using the Joint Account and steps taken to rectify the mistakes.

4.This being the case, during June 2017, the petitioner received notice from the respondent with false allegation that the petitioner as partner in Capricorn Movies, obtained loan of Rs.23 lakhs along with A1. The respondent/complainant is the rank stranger to the petitioner, he does not know him and had no transaction with him at any point of time. For the misdeeds committed by the other accused, the petitioner is now facing trial. The petitioner as early as on 17.06.2016 had got relieved from the joint Account, which is confirmed by the State Bank of India. This Cheque in question in this case is one year after the petitioner got relieved from the Joint Account. Admittedly in this case, the petitioner is not the authorized signatory to the cheque and the cheque not issued in the name of any partnership firm. In support of the contention, the petitioner produced a letter issued by the Bank confirming the deletion of his name from the joint Account.

5.The respondent submitted that the petitioner admits that he received the statutory notice, but not sent any reply. In the cheque, the name of Mr.LeelaKumar KrishnaKumar and Mr.B.Jayakrishna name of the petitioner is printed. The cheque is signed by one Mr.LeelaKumar. It is a joint Account as seen from the Cheque leaf, the petitioner's name is also printed. The petitioner received the statutory notice on 18.06.2017 wherein the details of the transaction of the petitioner and the other accused in running business of "Capricon Movies" as partnership business for which they took loan of Rs.23 lakhs. The cheque was returned for the reason "insufficient funds". Having received the notice, the petitioner failed to send any reply and now raising these points would be a matter of fact which is to be decided during trial and not in the quash petition.

6. Considering the submission and list of the materials, it is seen from the copy of the cheque produced that the cheque is signed by one Leelakumar Krishnakumar and not by the petitioner. The petitioner not signed the cheque in dispute. The petitioner got relieved from the joint account in A/c.No.20015951019 from 17.06.2016 is confirmed by the letter of the State Bank of India. Admittedly, the cheque in this case is no issued from any partnership account. The cheque not drawn in the name of any Company or Firm.

7.The Apex Court in the case of "Aparna A Shah Vs. Hieth Developers Pvt. Ltd and another reported in 2013 8 SCC 17" had categorically held that only the signatory / drawer of the cheque can be prosecuted and joint account holder cannot be made as accused in a case registered under the provisions of the N.I Act. Further on the other submissions of the complainant / respondent, that the cheque issued by the partnership firm is also not sustainable for the reason that for invoking a partner or others, under Section 141 of Negotiable Instruments Act which is by fastening vicarious liability, no averments or materials found. Admittedly, cheque is not issued in the account maintained by any Firm or Company.

8.On the bare reading of the complaint nowhere it is seen that there is any specific averments made against the petitioner. Hence, the required averments under Section 141 Cr.P.C. by which the petitioner is sought to be prosecuted is not available. There is no specific averments made and hence the deemed liability will not arise in this case.

9.The Apex Court in the case of SMS Pharmaceuticals Vs. Neeta Bhatta reported 2005 SCC 89 categorically held in the absence of specific averments against the partner or Director or any other person cannot be made as accused mechanically. Thus looking the case from any angle, there is no ground to proceed against the petitioner.

10.In view of the same, this Court quashes the proceedings as against the petitioner A2 alone. The trial Court to proceed with the trial as regards the other accused A1 Mr.Leelakumar finding that the case has been kept pending from 2017 without any progress. The trial Court is directed to complete the trial within a period of three months from the date of receipt of copy of this Order.

11.With the above direction, this Criminal Original Petition is allowed. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dk
To

The Metropolitan Magistrate
Fast Track Court - II,
Egmore,Chennai.

+1 cc to Mr.S.P.Arthi, Advocate Sr.NO. 24886

CRL.O.P.No.29933 of 2018 &
Crl.M.P.No.17595 of 2018

mt(CO)
A.SK(28/04/2022)