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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 21/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.OP(MD)No.1625 of 2019
and
Crl.MP(MD)No.834 of 2019

1.Ananda Raj
2.Joyson : Petitioners/A2 and A3

Vs.

K.Jawahar : Respondent/Petitioner

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in CC No.232 of 2018 on the file of the Judicial Magistrate/Fast Track Court (Magisterial Level), Thoothukudi and quash the same.

For Petitioners : Mr.K.Veilmuthu

For Respondent : Mr.R.J.Karthick

O R D E R

This petition has been filed seeking quashment of the case in CC No.232 of 2018 on the file of the Judicial Magistrate/Fast Track Court (Magisterial Level), Thoothukudi.

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2.**The case of the prosecution in brief**:-

The respondent filed a private complaint under section 138 of the Negotiable Instruments Act against the petitioner and others with the following allegations:- The accused 2 to 4 are running a transport business and 1st accused is the Company. In the month of March 2017, the 2nd accused met the complainant and requested a hand loan of Rs.1,66,000/-. That amount was given through the 3rd accused by way of a cheque. Later, in the month of July 2018, on demand, the second accused issued a cheque towards discharge of the above said liability, drawn on I.D.B.I bank, Thoothukudi. The cheque was signed by the 3rd accused on behalf of the 1st accused Company namely Jen Joy International. That was presented for collection and later that came to be dishonoured due to insufficient funds. After completing the statutory formalities, complaint has been filed stating that A1 company is a partnership firm and A2 is the Managing Partner and A3 and A4 are partners of the above said A1 company. That complaint was taken on file in CC No.232 of 2018 by the Judicial Magistrate/Fast Track Court (Magistrate Level), Thoothukudi for the offence under section 138 of NI Act.

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3.Seeking quashment of the same, this petition has been by A2 and A3 on the ground that they were no-way involved in the above said day today affairs of the A1 company. Without proper averments, now the complaint has been filed against the petitioners also. It is the another contention is that the Jen Joy International is a proprietary concern and the 3rd accused namely Joyson and these petitioners are no-way connected with the above said A1 company.

4.Heard both sides.

5.We can straightaway go to the averment that has been made by the respondent in para No.3 of the complaint. It has been stated that in the first week of March 2017, A2 met the complainant and requested a hand loan of Rs.1,66,000/- to meet out their urgent need for their company and promised to repay the same. After the payment of the above said amount, towards discharge of that loan only, the disputed cheque was issued by the second accused, which was signed by the 3rd accused on behalf of the first accused company.

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6.Now let us go the the notice that was issued by the respondent. It has been mentioned in para 2 that in the first week of March 2017, A2 approached him and asked a hand loan of Rs.1,66,000/- to meet out his urgent need and promised to repay the same. So believing his words only, the amount was given. Towards discharging the amount only, the cheque was issued, which was signed by the 3rd accused. Nowhere it has been stated that only on behalf of the A1 company, the second accused represented the company as Managing Partner and obtained the loan. But what has been stated is that the second accused approached him for loan to meet his own requirements. Towards discharge of that amount, the 3rd accused has issued a cheque, which was signed by him. Apparently, it is seen that the amount was not obtained by the second accused on behalf of the A1 company. Whether it is a proprietary concern of A3 or it is a partnership firm, in which these petitioners are also partners cannot be a matter for consideration in this petition. Even though, the petitioners filed documents showing that in the certificate of importer and exporter code, the third accused is shown as proprietor, it is not a public document, we cannot go in detail all those aspects.

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7.No doubt that the 3rd accused has signed in the disputed document. But what has been stated is that the second accused has obtained loan for his personal requirement. Under law, any one can issue cheque towards the discharge of the liability of some other persons. It is not necessary that the cheque ought to have been issued only by the second accused. When the second accused stated that the third accused has come forward to discharge his liability, then the third accused can be proceeded in accordance with law. But however, the presence of the second accused is also required, since against A1 there is a specific averment to the effect that only the second accused Ananda Raj obtained the loan. For the purpose of discharging the legally enforceable liability, the first petitioner presence is also required. Though, he cannot be convicted for the offence under section 138 of the Negotiable Instruments Act, since the cheque has been issued only by the third accused. So, I am of the considered view that the petition can be partly allowed.

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8.In view of the above, this criminal original petition is **dismissed in respect of the 2nd petitioner/A3**. In respect of the **1st petitioner/A2, this petition is allowed** and the impugned CC No.232 of 2018 on the file of the Judicial Magistrate/Fast Track Court (Magisterial Level), Thoothukudi is quashed as against him. Consequently, connected Miscellaneous Petition is closed.

21/04/2022

Index:Yes/No
Internet:Yes/No
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To,

The Judicial Magistrate/
Fast Track Court (Magisterial Level),
Thoothukudi.

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G.ILANGOVAN, J

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Note :
In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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