



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 27/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

CrI.OP(MD)No.6334 of 2019

and

CrI.MP(MD)Nos.4189 and 4190 of 2019

G.Thangaraj : Petitioner/Accused

Vs.

T.Ganesan : Respondent/Complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in STC No.275 of 2019 on the file of the Judicial Magistrate, Santhankulam, Thoothukudi District and quash the same.

For Petitioner : Mr.S.Palani Velayutham

For Respondent : No appearance

O R D E R

The petition has been filed seeking quashment of the case in STC No.275 of 2019 on the file of the Judicial Magistrate, Santhankulam, Thoothukudi District.

2.The case of the prosecution in brief:-

The complainant and the accused are friends. The son of the complainant namely Davapalani conducted a hotel business with the accused. So because of the above said business relationship, the accused demanded a sum of Rs.10,00,000/- from the complainant for the purpose of developing the business. The complainant promised to pay Rs.6,00,000/-, on 03/11/2018. The accused received Rs.6,00,000/-. But towards discharge of the above said liability, he issued six signed cheques. They were presented for payment, on 03/12/2018 on the advise made by the accused. But All the cheques were returned on 04/12/2018 stating that funds are insufficient in the account. Subsequent to that, after complying formalities, complaint has been filed stating that this petitioner has committed the offence punishable under section 138 of the Negotiable



Instruments Act. The complaint was taken on file by the Judicial Magistrate, Sathankulam, in STC No.275 of 2019.

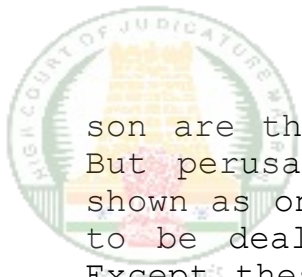
3. Seeking quashment of the same, this petition has been filed on the ground that the petitioner is not a drawer of the cheque and absolutely, there is no legally enforceable liability between them. Accounts stated in the complaint belongs to one Ranjith brothers, which is a partnership Firm.

4. In spite of receipt of the notice, there was no representation on behalf of the respondent. Even though on his behalf, one Advocate proposed to appear, but later, no vakalat was filed. So, his name was printed in the cause list. After hearing the petitioner, this order is passed.

5. Since it is stated that the petitioner is not a drawer of the cheque, the entire records have been called for and has also been submitted, which shows that the petitioner is the drawer of the cheque for Ranjith brothers. So, the contention of the petitioner that he is not the drawer of the cheque is not correct on record. Whether amount was borrowed by the petitioner on behalf of the above said partnership Firm is also matter for consideration by the trial court.

6. The contention on the part of the petitioner is that one R.Gnanadesigan and the petitioner were partners; In pursuance of the Deed of Partnership, dated 09/05/2014, by which both the parties started a business called 'Ranjith Brothers'; the Bank account was ordered to be opened in the name of the partnership Firm; both the parties, either jointly or severally permitted to operate the account.

7. Perusal of the partnership deed shows that this petitioner was also permitted to operate the account. But whereas one R.Gnanadesigan was shown as the Managing Director of the Firm. So the contention on the part of the petitioner that he is not the drawer of the cheques and the cheque account belongs to the partnership firm is partly correct. But as mentioned earlier, whether the amount was borrowed by the petitioner on behalf of the partnership Firm and has issued the cheques is a matter for consideration by the trial court, during the course of trial. If the trial court finds that the amount has been borrowed by the petitioner on behalf of the partnership Firm, it can be decided on merits, since the partner has to be added as an accused. So this disputed question of fact cannot be taken into account at this stage. Moreover, the partnership deed entered into between the above said R.Gnanadesigan and the petitioner, in which the complainant is not a party. Whether he was aware of the above said terms of partnership is also a matter for consideration during the course of trial. It is admitted by the complainant that the accused and his



son are the business partners, but he is referring one Devapalani. But perusal of the partnership deed shows that Devapalani is not shown as one of the partners. So these disputed factual aspects have to be dealt with by the trial court during the course of trial. Except these factual aspects, I find no legal aspect that has been advanced by petitioner. On that sole ground, this petition is liable to be dismissed.

8. Accordingly, this criminal original petition is **dismissed**. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(P & A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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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.

To,

The Judicial Magistrate,
Sathankulam,
Thoothukudi District.

**Cr1.OP(MD)No.6334 of 2019
27.04.2022**

kg(CO)
TR(10.06.2022) 3P 2C