



Crl.O.P.(MD) No.11119 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	20.07.2022
Delivered on	23.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.O.P.(MD) No.11119 of 2022
and
Crl.M.P(MD)No.7013 and 7014 of 2022

H.Ansar Ali,

: Petitioner

Vs

M.S.Raja Holding
On Behalf of the Firm by Power Agent
S.Kannan,
Power given by Partner of Raja Holding Sri
R.V.Subramaniam

: Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying call for the records in S.T.C.No. 498 of 2021, on the file of the learned Judicial Magistrate No.I, Kumbakonam and quash the same as illegal.

For Petitioner : M/s.Mohammed Rafi H S,
For Respondent : Mr.Lakshmi Shankar



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ORDER

This criminal original petition has been filed seeking to quash the proceedings in S.T.C.No. 498 of 2021, on the file of the learned Judicial Magistrate No.I, Kumbakonam.

2.The facts of the case are that the petitioner is the accused person in S.T.C.No.498 of 2021, on the file of the learned Judicial Magistrate No.I, Kumbakonam. The respondent is the complainant. The petitioner is prosecuted for having committed an offence punishable under Section 138 of Negotiable Instruments Act, 1881. The complainant firm is represented by its power agent/S.Kannan. In the complaint, it is stated that the complainant is a registered partnership firm functioning in the name and style 'M/s.Raja Holding'. The petitioner accused borrowed a loan of Rs.20,00,000/- from the complainant. The complainant paid that amount through it's account in the Indian Overseas Bank, Town Branch Kumbakonam, on 30.09.2015, by cheque bearing No.440332. The petitioner had executed a pronote for the loan amount and agreed to repay the same with 30% of interest per annum. Till 15.07.2018, the



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accused person repaid a sum of Rs.21,25,000/- and he has to pay the balance amount i.e., Rs.9,46,290/-. Thereafter, he had paid only a sum of Rs.2,00,000/-, on 11.11.2019 for interest. For the balance amount i.e., Rs.15,58,999/-, the accused person gave a cheque drawn on the Kumbakonam Branch of the State Bank of India, dated 30.06.2021 with the cheque No.140660. The complainant put it for collection on 30.06.2021 at the Kumbakonam Branch of State Bank of India, which was returned as 'insufficient funds'. Hence a demand notice was issued within a period of fifteen days and the accused person also received the same and sent a reply notice through his Advocate with false allegation. Hence the private complaint has been filed against the petitioner, which is under challenge.

3.The learned Counsel appearing for the petitioner submitted that the criminal complaint against the petitioner is not maintainable and the same is liable to be quashed on the ground that the loan amount was not paid to the petitioner in his individual capacity. The complaint has been filed through the complainant firm's power of attorney. He is not



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competent to speak about the transaction between the petitioner and the complainant firm. The petitioner gave the cheque for security purpose and the same was misused by the complainant. The petitioner is one of the partner to AMD Housing Developer. Being a partnership firm, without making the firm as an accused, this complaint is unsustainable.

To support his argument, he relied upon the following judgments:

'1.Aneeta Hada Vs.M/s.Godfather Travels and Tours Private Limited, reported in AIR 2012 SC 2795.

2.N.Elangovan Vs. C.Ganesan reported in (2014) 4 MLJ (Crl) 517,

3.Rangabashyam and another Vs.Ramesh, in Crl.O.P.No.13147 of 2015,

4.Dilip Hariramani Vs.Bank of Baroda, in Crl.A.No.767 of 2022.'

4.The learned Counsel appearing for the petitioner further reiterated the other grounds raised in the grounds of appeal and thus pleaded to quash the criminal proceedings in S.T.C.No.498 of 2021, on the file of the learned Judicial Magistrate No.I, Kumbakonam.

5.The learned Counsel appearing for the respondent submitted that the petitioner borrowed the said amount as his personal loan not as a



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partner to the AMD Housing Developer and further in his reply notice, he had not raised any objection for not impleading the AMD Housing Developer as an accused and he did not deny his borrowing of personal loan. Under these circumstances, the petitioner borrowed the loan in his personal capacity. Therefore, the AMD Housing Developer need not to be implicated in the criminal complaint. Apart from this, he further submitted that for non-impleading the partnership firm in the complaint, the proceedings in S.T.C.No.498 of 2021 need not to be quashed. He may be permitted to implead the partnership firm i.e., AMD Housing Developer as an accused. To support his argument, he relied upon the following judgments:

'1.Manish kalani and others Vs.Housing and Urban Development Corporation Limited (HUDCO) and others.

2.Rajeshbhai Muljibhai Patel and others Vs. State of Gujarat and Others.'

6.I have considered the matter in the light of the submissions made by the learned Counsel appearing for the parties.



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7.On a perusal of records, it is seen that the petitioner borrowed a loan of Rs.20,00,000/- on 30.09.2015 via cheque bearing No.440332 of the complainant's account in Indian Overseas Bank, Town Branch Kumbakonam. Further, the petitioner gave a cheque to the complainant for a sum of Rs.15,58,999/- drawn at Branch of State Bank of India, dated 30.06.2021 cheque bearing No.140660 are not disputed.

8.On a perusal of the disputed cheque, it is seen that the cheque belongs to the account maintained by AMD Housing Developer. The account No. is 34325380616 is also not disputed. It is clear that the name of the drawer of the cheque is AMD Housing Developer. It is signed by the petitioner. Now, the question is whether the petitioner borrowed the loan amount in his personal capacity or borrowed the loan for AMD Housing Developers, because the cheque belongs to the account maintained by AMD Housing Developers' account. Whether the cheque was issued only for security purpose and the same has been misused by the respondent as raised in the grounds of appeal in para 'w'. Further, in the reply notice of the petitioner, he had not stated that the loan was



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borrowed by AMD Housing Developers and the cheque was issued by AMD Housing Developer. It has to be noted that the petitioner had not raised the question of law that the prosecution of the petitioner as a partner without implicating the partnership firm is not maintainable, without making the firm as an accused in his affidavit. There is no dispute with regard to the legal principles of the Hon'ble Supreme Court that for maintaining a prosecution under Section 141 of Negotiable Instruments Act, arraigning of a company as an accused is imperative only within the other categories of offenders can be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself.

9.In the present case, the complainant and the petitioner disputed the fact whether the petitioner borrowed the loan amount for AMD Housing Developer or for petitioner's personal capacity and also, the petitioner disputed the fact that by himself, the disputed cheque was given as a security purpose only and the same was misused by the complainant. Therefore, whether the disputed cheque was given as



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security or not, whether the petitioner borrowed the loan amount for his personal purpose or for the benefit of AMD Housing Developers are the question of facts, which could have been determined only by the trial Court, after recording evidences of the parties.

10.In view of the above, before commencement of trial, the criminal proceedings cannot be quashed since it does not satisfy the parameters of the law laid down by the Hon'ble Supreme Court in *M/s.Neeharika Infrastructure Private Limited Vs. State of Maharashtra and others (2021 SCC Online SC 315)*

11.Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are closed.

23.08.2022

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
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V.SIVAGNANAM, J.

lr

To

The Additional Public Prosecutor,
Madurai Bench of Madras High Court.
Madurai.

Pre-Delivery Order made in

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23.08.2022