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CrI.O.P.Nos.25728 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRL.O.P.No.25728 of 2016

T.R.Pachamuthu @ Paari Vendhar

... Petitioner

Vs.

S.Mukunchand Bothra

... Respondent

PRAYER:

Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records and quash the proceedings as against the petitioner pending in C.C.No.5734 of 2016 pending on the file of the Metropolitan Magistrate, Fast Track-I, Allikulam Commercial Complex, Chennai-3 for an offence under Section 138 of Negotiable Instruments Act, 1881.

For Petitioner

: Mr.R.Ganeshkumar

For Respondent

: No appearance



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ORDER

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The present Criminal Original petition is filed to quash the proceedings in C.C.No.5734 of 2016 on the file of the Metropolitan Magistrate, Fast Track-I, Allikulam Commercial Complex, Chennai.

2. The Respondent died. On behalf of him, one, M.Gagan Bothra, who is the son of the deceased respondent, is representing and he submitted a memo before this court seeking permission to appear as party-in-person on behalf of the respondent. When the matter was posted on 06.10.2023, he argued all the criminal original petitions and sought for adjournment to produce some documents to show that the 4th accused / the petitioner is also a partner of the 1st accused partnership firm. However, today he is not present.

3. The respondent has alleged for offence under Section 138 r/w 141 of Negotiable Instruments Act. The crux of the complaint is that the petitioner, who is a partner of partnership company, along with others borrowed loan for interest for business purpose. At the time of borrowel of loan, they had also executed a Promissory Note in favour of the respondent. They had borrowed total sum of Rs.7,50,00,000/- and also entered into an agreement on 11.01.2016. In order to repay the borrowed loan amount, they had issued two



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cheques for a sum of Rs.1,60,00,000/-. Both the cheques were presented for collection and both were returned dishonoured with an endorsement "Account Frozen".

4. The point raised for consideration in this petition is that whether the petitioner is liable to pay under Section 141 of Negotiable Instruments Act. Even according to the respondent, the petitioner is neither partner nor signatory of the cheque. He assisted the other accused persons to borrow the loan. Even assuming that he is a partner of the first accused firm, no specific allegations levelled as against the petitioner. The provision under Section 141(1) of the Negotiable Instruments Act, 1881 is extracted hereunder:

141 Offences by companies.

(1) "If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office



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or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter".

5. Therefore, only those, who at the time of commission of offence, was in charge and was responsible for the conduct of the business is liable. Further, the primary responsibility is on the respondent to make specific averments as required under the provisions in the complaint so as to make the petitioner vicariously liable for facing the criminal liability. There is no presumption over partnership about the transaction. In fact, the respondent failed to produce any piece of evidence to show that the petitioner is also one of the partner of the 1st accused. Though in paragraph No.3, averred that the petitioner is also one of the partner, the respondent did not produce any document to show that he is also one of the partner of the 1st accused. Therefore, the petitioner cannot be held vicariously liable.

6. Hence, the entire proceedings initiated as against the petitioner for the offence under section 138 of Negotiable Instrument Act cannot be sustained and it is liable to be quashed. Accordingly, the proceedings in C.C.No.5734 of 2016 pending on the file of the Metropolitan Magistrate, Fast Track-I,



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Allikulam Commercial Complex, Chennai is quashed as against the petitioner
and this Criminal Original Petition is allowed.

02.11.2023
(2/2)

Index :Yes/No
Internet : Yes/No
Speaking order/non-speaking order
gvn

To
The Metropolitan Magistrate, Fast Track-I,
Allikulam Commercial Complex,
Chennai.

G.K.ILANTHIRAIYAN, J.



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