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Crl OP No. 3975 / 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 3975 of 2021
and
Crl.M.P. No. 2403 of 2021

Jitendra Agarwal

... Petitioner

Versus

Mr.Arun Kumar Somani

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records in C.C. No. 165 of 2016 on the file of the Judicial Magistrate No.1 at Tiruppur and quash the same.

For Petitioner : Mr. K. Myilsamy.

For Respondent : Mr. R.C. Varsha for Mr. G.R. Hari.

O R D E R

The petition is to quash the private complaint in C.C. No. 165 of 2016 filed for the alleged offence under Sections 138 & 142 (2) of the Negotiable Instruments Act, 2015.



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2.It is alleged in the complaint that the first accused company had issued a cheque which was signed by A5 and A6 in favour of the respondent towards discharge of their liability; that when the same was presented for collection, it was dishonoured for the reason 'Account closed'.

3.The learned counsel for the petitioner submitted that the petitioner is arrayed as A7 in the complaint. He is shown as Authorised Signatory of the cheque. However, admittedly, he had not signed the cheque which is the subject matter of the impugned complaint. That apart, he is also not a director and hence, he cannot be said to be a person incharge and responsible to the company for the conduct of its business. He further submitted that A4 has filed a petition in Crl. O.P. No. 8349 of 2018 and this Court had quashed the complaint since the allegations against him were vague.

4.The learned counsel for the respondent, per contra, submitted that there are specific averments in the complaint to show that the cheque was issued with the consent and knowledge of the Accused 2 to 4 and 7.



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Since there are specific allegations in the complaint, the respondent must be given an opportunity to establish the fact that the petitioner was also vicariously liable under Section 142(2) of the Negotiable Instruments Act, 2015. Even if the petitioner is not a director, if the offence has been committed with his knowledge and consent, he would be liable to face the prosecution.

5.This Court on perusal of the impugned complaint finds that though the petitioner is shown as Authorised Signatory, he has not signed the cheque. Cheque was admittedly signed by A5 and A6. Except for the vague allegations that the cheque was given with his consent and knowledge, there is nothing in the impugned complaint to show the petitioner's involvement with the alleged offence. The petitioner cannot be prosecuted on the basis of such a vague allegation. That apart admittedly, the petitioner is not a director of the first accused company. In the absence of necessary ingredients to attract the provisions of Section 141(2) of the Negotiable Instruments Act, 2015, this Court is inclined to quash the complaint in so far as the petitioner alone is concerned. Since the case is of the year 2016, the learned Magistrate may expedite the trial and in any event, complete it within a period of three months from the



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date of receipt of a copy of this order.

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6. Accordingly, this Criminal Original Petition is allowed by quashing the proceedings in C.C. No. 165 of 2016 on the file of the Judicial Magistrate No.1 at Tiruppur against the petitioner. Consequently, the connected miscellaneous petition is closed.

26.06.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The Judicial Magistrate No.1,
Tiruppur.



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SUNDER MOHAN, J

ay

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