IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2023

CORAM

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

Crl.O.P.No.6959 of 2021
and
Crl.M.P.No.4604 of 2021

N.Sadasivam ... Petitioner

-Vs-

1. M/s Kolli Subba Reddy HUF,
   represented by its Kartha Kolli Subba Reddy

2. M/s. S R R Finance, (Regn.No.1830/2012),
   represented by its Managing Partner,
   No.3, 4th Street, PTC Colony,
   Raja Kilpakkam, Chennai-600 073.

3. C.Rangaraj ... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records and quash the C.C.No.3296 of 2018 on the file of the III Fast Track Court, at Saidapet, Chennai, against the petitioner/3rd accused.

For Petitioner : Mr.V.Ramana Reddy

For Respondents : Mr.R.Ganesh Ram

ORDER

This Criminal Original Petition has been filed challenging the C.C.No.3296 of 2018 on the file of the III Fast Track Court, at Saidapet, Chennai.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record.

3. The first respondent lodged a complaint for the offences under Sections 138 and 142 of the Negotiable Instruments Act as against the petitioner and the respondents 2 and 3 herein. The crux of the complaint is that the first accused is a registered Partnership Firm bearing Registration No.1830/2012. The second and third accused are partners of the first accused. The second and third accused, on behalf of the first accused, had approached the first respondent for loan. On 18.12.2014, the first respondent had lent a sum of Rs.5,00,000/- as loan. The accused also had executed promissory note dated 18.12.2014 and issued pro-note. On 27.04.2015, further sum of Rs.7,50,000/- was borrowed by them, for which also they had executed a promissory note in favour of the first respondent. Once again, on 05.05.2015, a sum of

Rs.20,00,000/- and Rs.5,00,000/- were borrowed by them and pro-notes were executed. In total, they had borrowed a sum of Rs.37,50,000/- and they had also repaid a sum of Rs.2,51,500/-, which includes the amount of Rs.50,000/- repaid on 01.12.2016 and it was appropriated towards the 1st loan amount; a sum of Rs.5,40,000/- had been repaid on various dates and it was appropriated towards the 2nd loan amount; a sum of Rs.2,50,000/- had been repaid on various dates and it was appropriated towards the 3rd loan amount and a sum of Rs.3,00,000/- had been repaid on various dates and it was appropriated towards the 4th loan amount. For the remaining amount, the second accused had handed over cheques bearing Nos.070043, 070044 and 070045. The cheques were presented for collection on 15.10.2017 and all the cheques were bounced on 17.10.2017 for the reason “Funds Insufficient”. After causing statutory notice, the defacto complainant lodged complaint.

4. The learned counsel for the petitioner would submit that the petitioner is arrayed as A3. The petitioner is neither a partner nor a signatory to the cheque. The petitioner is a Singapore resident and he is permanently residing at Singapore. The petitioner, being the brother of the second accused, had been falsely implicated as an accused. The entire allegations are bald and vague and

no specific allegation is made out as against the petitioner to attract the offences under Sections 138 and 142 of the Negotiable Instruments Act.

5. A perusal of the complaint revealed that the first respondent categorically stated that the first accused is a Partnership Firm and it is represented by its Kartha namely, the second accused. It is a registered firm bearing Registration No.1830/2012. The second and third accused are the partners cum brothers. They directly approached the first respondent for loan. As stated supra, on so many occasions, they had borrowed a total sum of Rs.37,50,000/-. In order to repay remaining amount, they issued cheques and all the cheques were presented for collection. However, all the cheques were returned dishonoured for the reason “Funds Insufficient”. In fact, the first respondent caused notice to the petitioner and the same was returned with an endorsement “Intimation Delivered”. It amounts to valid service of notice. However, the petitioner did not reply.

6. Though the learned counsel for the petitioner specifically contended that the petitioner is not a partner and he is a Singapore citizen, he did not even produce an iota of evidence to show that he is not a partner or a Singapore

citizen. The first respondent categorically stated the specific overtact of the petitioner and the involvement of the petitioner while borrowing loan. The first respondent also mentioned the document bearing Registration No.1830/2012 to prove that the first accused is a Partnership Firm associated with two partners viz., the second and third accused. That apart, the grounds raised by the petitioner can be considered only before the Trial Court during the Trial by letting in evidence.

7. As stated supra, there are specific overtact to the attract the offences under Sections 138 and 142 of Negotiable Instruments Act as against the petitioner. Therefore, this Court is not inclined to quash the proceedings in C.C.No.3296 of 2018 on the file of the III Fast Track Court, at Saidapet, Chennai.

8. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous petition is closed.

06.11.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
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G.K.ILANTHIRAIYAN. J,

mn

To

The III Fast Track Court, at Saidapet, Chennai.

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