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Crl.O.P.Nos.7754 of 2021 & 14208 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2023

CORAM:

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

CRL.O.P.Nos.7754 of 2021 & 14208 of 2022 and
Crl.MP.Nos.5119 of 2021 & 7756, 7757, 14650 of 2022

Crl.OP.No.7754 of 2021

R.Magesh

... Petitioner

Vs.

1.M/s.Vel and Company,
Rep. By its Partners,
C.K.Velu and J.Gajendran,
No.95/1, East 2nd Cross Street,
Ganesh Nagar, Arakkonam 631 003,
Vellore District

2.C.K.Velu

3.J.Gajendran

... Respondents

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records of the learned Judicial Magistrate, Arakkonam dated 02.03.2021 made in CMP.No.3997 of 2019 in CC.No.162 of 2018 and to set aside the same and to direct the respondents to remit 20% of the cheque amount amounting to a sum of Rs.30,12,500/-

For Petitioner : Mr.C.Jeremiah

For Respondents : No appearance



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Crl.OP.No.14208 of 2022

C.K.Velu

... Petitioner

Vs.

1.R.Magesh

2.M/s.Vel and Company,
Rep. By its Partners,
C.K.Velu and J.Gajendran,
No.95/1, East 2nd Cross Street,
Ganesh Nagar, Arakkonam 631 003,
Vellore District

3.J.Gajendran

... Respondents

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the entire records in CC.No.162 of 2018 on the file of the learned Judicial Magistrate at Arakkonam to quash the same with respect to the petitioner / 2nd accused.

For Petitioner : Mr.M.Kempraj

For Respondents
For R1 : Mr.G.Jeremiah

For R2 & 3 : No appearance

COMMON ORDER

The criminal original petition in Crl.OP.No.7754 of 2011 has been field to set aside the order of the learned Judicial Magistrate, Arakkonam dated



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02.03.2021 made in CMP.No.3997 of 2019 in CC.No.162 of 2018 and to direct

the respondents to remit 20% of the cheque amount to the tune of Rs.30,12,500/-. The criminal original petition in Crl.OP.No.14208 of 2022 has been filed to quash the proceedings in CC.No.162 of 2018 on the file of the learned Judicial Magistrate at Arakkonam in respect of the petitioner/ A2

2. In respect of Crl.OP.No.14208 of 2022, the petitioner is arrayed as the second accused in the complaint lodged by the first respondent for the offence punishable under Section 138 of NI Act. The first respondent lodged complaint alleging that he is a dealer of Indian Oil Corporation and carrying on business in the name and style of 'GPR Agencies'. It is a sole proprietary concern. The accused 2 & 3 are the partners of the first accused company. They owned a crushing machinery and the blue metal is supplied to the Railways under contract. During the course of business, the accused approached the complainant for supply of high speed diesel for operating vehicles and machineries. They also requested to provide running account for supply of diesel. Payment would be made on the basis of the monthly statement. About 25,000 to 30,000 litres of diesel would be supplied per month and payments effected at the end of the current month directly to the first respondent's



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account. As on 31.03.2018, there was outstanding of Rs.38,81,368.61/-.

Thereafter, the first respondent stopped supply of diesel. Therefore, the accused personally approached the first respondent and requested to resume to supply on promise to clear the outstanding after reconciliation of the accounts. Accordingly, reconciled the account and mutually agreed to pay a sum of Rs.1,50,50,000/-. The accused issued cheque for the said sum and the same was presented for collection. However, it was returned dishonoured for the reason 'account closed'. After issuance of statutory notice, the first respondent lodged complaint. The trial court had taken cognizance and issued summons to the petitioner.

3. The learned counsel for the petitioner would submit that he is arrayed as A2 and he issued reply notice on receipt of the statutory notice as contemplated under Section 138 of NI Act and specifically stated that he had resigned from the first accused partnership firm with effect from 31.03.2017 and as such, he is not liable for any payment . He had also executed retirement cum partnership deed on 31.03.2017. It was also duly informed to their bank. Therefore, the current account maintained by the partnership firm was closed and opened new account in the name of the newly inducted partners. While



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pending trial, the first respondent filed petition for interim compensation under

Section 143A of NI Act. The same was dismissed on the ground that it is not necessary that in all the cases the trial court necessarily direct the complainant to pay compensation. Further, the legislature has intentionally not used the word 'shall' since it would have prevented the accused persons even in genuine cases from defending themselves without paying 20% as interim compensation amount to the complainant. This would have directly affected the fundamental right of an accused to defend himself in criminal cases.

4. On perusal of records, it is seen that retirement cum partnership deed was executed between themselves. It was not registered before the authority concerned. They themselves created retirement cum partnership deed and closed their current account. Knowing fully well that the current account was closed, they had issued cheque in favour of the first respondent. The petitioner only with intention to escape from the clutches of law, they executed retirement cum partnership deed and closed the account. Therefore, the petitioner cannot escape from the law since he is the main partner of the first accused company and he had actively participated in the day to day affairs of the first accused partnership firm. He only directly involved in the business



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transaction with the first respondent. Therefore, this Court finds no ground to quash the proceedings initiated under Section 138 of NI Act against the petitioner. Accordingly, the criminal original petition in Crl.OP.No.14208 of 2022 is dismissed.

5. Insofar as the criminal original petition in Crl.OP.No.7754 of 2021 is concerned, the case of the complainant is that the petitioner and the third respondent are the partners of the second respondent. In view of the order placed by them for supply of high speed diesel, the first respondent supplied diesel for the vehicles and machineries run by the accused. As on 31.03.2018, there was an outstanding amount of Rs.38,81,368.61/-. When the first respondent called to clear the outstanding, the accused requested not to discontinue supply of diesel. Therefore, believing the words uttered by the accused, the first respondent resumed supply of diesel and there was due of Rs.1.5 crores. The petitioner only approached the first respondent and issued cheque. He is the signatory of the cheque and the same was presented for collection. However, it was returned dishonoured.



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6. It is also evident that the first respondent has filed suit in OS.No.82 of 2019 on the file of the II Additional District Judge, Ranipet for recovery of money to the tune of Rs.1,92,03,497/- together with interest at the rate of 24% per annum and it is pending. Interlocutory application in IA.No.1 of 2019 was also filed for attachment by the first respondent. However, the trial court did not comply with the mandate of Order 33 Rule 5 of CPC. Hence, the first respondent filed civil revision petition before this Court in CRP.No.4089 of 2019 and this Court passed order of interim attachment before judgment in respect of the suit property except 'A' schedule property by order dated 06.02.2020. However, it does not mean that the outstanding amount has been realised. It is nothing to do with the interim compensation as contemplated under Section 143A of NI Act. Therefore, the trial court ought not to have dismissed the petition claiming interim compensation.

7. It is seen that a cheque was issued towards the due of Rs.1,50,50,000-/. The said due was calculated from the supply of high speed diesel to the accused. The petitioner also produced invoices for supply of high speed diesel to the accused. Therefore, the complainant made *prima facie* case to claim interim compensation. It is relevant to extract provision under Section 143A of NI Act as follows:



143A. Power to direct interim compensation.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant—

- (a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and*
- (b) in any other case, upon framing of charge.*

(2) The interim compensation under sub-section (1) shall not exceed twenty per cent. of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under subsection (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant

(5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973 (2 of 1974), shall be reduced by the amount paid or recovered as interim compensation under this section.

8. It is true that the trial court need not to order interim compensation in all cases. But in the case on hand, the accused had issued



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cheque for the supply of diesel to operate its vehicles and machineries. On perusal of reply notice, the accused did not deny the allegations that the defacto complainant supplied high speed diesel. They also failed to state that they had already paid money for the supply of diesel. Therefore, the trial court ought to have ordered interim compensation as contemplated under Section 143A of NI Act.

9. In view of the above, the order of the learned Judicial Magistrate, Arakkonam dated 02.03.2021 made in CMP.No.3997 of 2019 in CC.No.162 of 2018 is set aside and the criminal original petition in Crl.OP.No.7754 of 2021 is allowed. The accused are directed to remit 20% of the cheque amount to the credit of CC.No.162 of 2018 within the period of thirty days from the date of receipt of copy of this order.

Consequently, connected miscellaneous petitions are closed.

10.10.2023

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

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G.K.ILANTHIRAIYAN, J.

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To

- 1.The learned Judicial Magistrate,
Arakkonam
- 2.C.K.Velu and J.Gajendran,
Partners,
M/s.Vel and Company,
No.95/1, East 2nd Cross Street,
Ganesh Nagar, Arakkonam 631 003,
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