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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.08.2023

PRONOUNCED ON: 21.08.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.O.P.No.7442 of 2021
and
Crl.M.P.No.4933 of 2021

R. Balachandru ... Petitioner

/vs/

M/s. Sree Devi Wind Form India Pvt Ltd.,
rep. By its Power of Attorney
Agent/Manager: B.Thiyagarajan,
S/o. C. Balasubramaniam,
having office at No.14,
Raja Rao Street,
Tirupur – 641 601,
and Branch Office at 25,
VCTV Road-II Street,
Opp. Saravana Petrol Bunk,
Sathy Road, Erode 638 003 ... Respondent

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Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for the records pertaining to STC No.84 of 2020 on the file of the Fast Track Judicial Magistrate No.II, Erode and quash the same as far as the petitioner is concerned.

For Petitioner	...	Mr.A. Mohamed Ismail forM/s.Veera Associates
For Respondent	...	Mr. M.Karthi

ORDER

This criminal original petition has been filed to quash the case in STC No.84 of 2020 on the file of the Fast Track Judicial Magistrate No.II, Erode as against the petitioner.

2. The case of the respondent/complainant is as follows:-

The respondent/complainant is a private limited company, namely, Sree Devi Wind Form India Pvt. Ltd., is registered under the Companies Act. The first accused, namely M/s.Green India Textile Process, is the partnership firm. The second and third accused are its partners and they are incharge and responsible for the day to day affairs and regularly looking after and actively taking part in the day to day business of the first

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accused partnership firm. The respondent/complainant is a dealer in dyes and chemicals. The first accused/partnership firm used to purchase dyes from the complainant on credit basis. As per the account maintined by the respondent/complainant, the accused have to pay the balance sum of Rs.12,69,132/- to the complainant. In order to discharge part of the above said liability, the second accused with the knowledge of third accused signed and issued 20 cheques drawn on Karur Vysya Bank, Tiruppur Branch bearing Nos.000461, 000443, 000292, 000494, 000493, 000497, 000495, dated 21.10.2019 for a sum of Rs.45,194/-, Rs.1,01,628/-, Rs.73,573/- Rs.1,15,404/-, Rs.38,468/-, Rs.67,231/-, Rs.80,299/- respectively and cheques bearing Nos.000290, 000291, 000444, 000293, dated 30.10.2019 for a sum of Rs.37,760/-, Rs.75,520/-, Rs.73,603/-, Rs.1,11,510/- respectively and cheques bearing Nos.000553, 000552, 000550, 000549, 000551, dated 04.11.2019 for a sum of Rs.25,400/-, 1,22,130/-, 83,249/-, Rs.16,933, R.57,230/- respectively and the cheques bearing Nos. 000496, 000555, 000554, 000556, dated 07.11.2019, for a sum of Rs.19,234/-, 14750/-, 84960/- Rs.21,506/- respectively. When the respondent/complainant presented the above 20 cheques for collection on

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13.11.2019, through City Union Bank, the same were returned on 14.11.2019 as " Funds insufficient". Thereafter, on 02.12.2019, the respondent/complainant issued a legal notice to the accused calling upon to pay the above said cheque amounts within 15 days from the date of receipt of the notice. Though the accused received the notice on 13.12.2019, failed to pay the cheque amount within 15 days. Hence, the accused had committed an offence punishable under Section 138 r/w. 142 of N.I. Act, Therefore, the complaint is filed, which is now challenged by the petitioner/A3.

3. The learned counsel for the petitioner/A3 submitted that the petitioner is no way connected to the activity of the first accused/partnership firm and the second accused. The petitioner herein retired from the first accused/partnership firm on 01.09.2019 itself and all the disputed cheques have been issued to the respondent/complainant only subsequent to his retirement from the first accused/partnership firm. Therefore, the criminal proceedings as against the petitioner is not maintainable and liable to be quashed.

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4. To support his argument, the learned counsel relied upon the judgment of this Court order dated 19.06.2023 made in ***Crl.O.P.No.7441 of 2021 (R.Balachandru /s/ M/s. VS Traders and Crl.O.P.No.18129 of 2007, dated 20.11.2007 (S.Raja Saravanan /vs/ K. Anandarajan).***

5. The learned counsel for the respondent/complainant submitted that the cheques were duly signed by the second accused and the transaction took place when the petitioner/third accused was in the partnership firm. Therefore, he is liable to answer the dishonour of cheques and liable to be prosecuted.

6. To support his argument, the learned counsel relied upon the judgment of this Court dated 20.09.2017 made in ***Crl.O.P.Nos.16389 & 19988 of 2010 (S.Soundappan & Sivaji /vs/ M/s.Sri Pathy Fashions & otrs) and*** a case reported in ***AIR 2022 SC 4883 (S.P.Mani & Mohan Dairy /vs/ Dr. Snehalatha Elangovan).***

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7. I have considered the matter in the light of the submissions made by the learned counsel for the parties and perused the materials available on records carefully.

8. The undisputed fact of the case is that the respondent/complainant is a private limited company registered under the Companies Act and the first accused is a Partnersip Firm, in which, the second & third accused are one of the partner. But, the contention of the petitioner/third accused is that he retired from the Partnership Firm on 01.09.2019.

9. On perusal of the materials on record, it reveals that the Partnership Deed was executed on 26.02.2018. But the alleged deed was not registered, it remains unregistered. The alleged retirement deed of the petitioner/third accused from the partnership is on 01.09.2019. This deed is also filed along with materials, but, it is also unregistered one under the Indian Partnership Act. The alleged disputed 20 cheques were issued during the period from 21.10.2019 to 07.11.2019, i.e., after the alleged execution of retirement deed by the petitioner on 01.09.2019. Now, the

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question of the fact is to be decided whether the petitioner retired from the first accused/partnership firm on 01.09.2019.

10. I have considered the averment made in the complaint by the complainant. The allegation made against this petitioner/A3 in the complaint is that he is a partner of the first accused/ Partnership Firm . The further averment in the complaint is that in order to discharge the above said liability, on behalf of first accused/Partnership Firm, the second accused with the knowledge and consent of the petitioner/third accused, signed and issued the above mentioned 20 cheques are drawn on Karur Vysya Bank, Tiruppur .

11. It is also to be noted that the alleged deed of retirement from the Partnership Firm is on 01.09.2019 and admittedly, all the cheques were issued for the transaction between the parties during the period from 21.10.2019 to 07.11.2019.

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12. At this stage, the observation of the Special Committee report with regard to the notice to the Registrar of Firms under Section 63 is to be considered. It runs as follows:-

> *" 3. Why is a notice to the Registrar of Firms under Section 63 necessary ?- The Special Committee, in their report, observed as under :*
>
> > *" 21. As regards retired or expelled partners, who are legally on the same footing, there will be strong inducement to have the changes noted in the register. The law provides that a retired or an expelled partner continues to be liable for the acts of the firm, and he continues to be liable for any act of theirs, purporting to be done on behalf of the firm, until public notice is given of the retirement or expulsion. Clause 71 of the Bill provides that this public notice can be given as regards retirement and expulsion only by notice, to the Registrar, which will be recorded in the register. Hence, when a partner retires or is expelled, it will be in his own interest and also in the interest of the remaining partners to give immediate notice of the change to the Registrar."*

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13. In this case, the petitioner, being a partner of the first accused/ Partnership Firm during the period of transaction of dyes from the complainant's company, failed to furnish un-contraversial materials or acceptable circumstances to substantiate his contention at the time of issuance of cheques, he was retired from the first accused/Partnership Firm. Further the date of issuance of cheques, i.e.21.10.2019, 30.10.2019, 04.11.2019 & 07.11.2019 are not seems to be a long period from the alleged date of retirement of the petitioner, i.e. on 01.09.2019. The controversial question of retirement of the petitioner from the partnership firm is to be adjudicated only at the time of trial. Under these circumstances, this controversial fact cannot be adjudicated while exercising the power under Section 482 of Cr.P.C.

14. At this juncture, it is pertinent to point out that the Hon'ble Supreme Court has discussed in detail about the inherent powers of the High Courts under Section 482 Cr.P.C in the following cases:

(i) R.P.Kapur Vs. The State of Punjab reported in ***AIR 1960 SC 866***

(ii) State of Haryana & Ors. Vs. Ch.Bhajan Lal & Ors. reported in

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AIR 1992 SC 604

(iii) M/s.Neeharika Infrastructure Pvt. Limited Vs. State of Maharashtra & Ors. reported in 2021 SCC Online SC 315

14.1. In the case of ***R.P.Kapur Vs. The State of Punjab*** reported in ***AIR 1960 SC 866,*** the Hon'ble Supreme Court has held as follows:

> "*6. .... It is well-established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of*

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appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained."

14.2. Further, in the case of ***State of Haryana & Ors. Vs. Ch.Bhajan Lal & Ors.*** reported in ***AIR 1992 SC 604,*** the Hon'ble Supreme Court issued seven guidelines to be followed by the High Courts in the exercise of its inherent power vested by Section 482 Cr.P.C to quash the FIR/complaint, which are as follows:

"*(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any*

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offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

14.3. Similarly, in the case of ***M/s.Neeharika Infrastructure Pvt. Limited Vs. State of Maharashtra & Ors. reported in 2021 SCC Online SC 315,*** the Hon'ble Apex Court has observed as follows:

"80. ...., our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to

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be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

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ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

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xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

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15. It is to be noted that the present case does not meet the parameters laid down by the Hon'ble Supreme Court in the decisions cited *supra*. Further, I do not find any merit in the present case.

16. Since the case involved the factual adjudication of the retirement of the petitioner from the first accused partnership firm and the question has to be adjudicated before the Trial Court. The judgments relied on by the learned counsel for the petitioner are not factually applicable to the case on hand and not helpful to quash the criminal proceedings. Hence, at this stage, it is not proper to quash the criminal proceedings as against this petitioner and I find no merit in this petition and the same is liable to be dismissed.

17. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

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To
The Judicial Magistrate,
Fast Track Court-II,
Erode.

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V.SIVAGNANAM ,J.

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Pre-delivery order made in
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