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Criminal Original Petition No.16000 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Criminal Original Petition No.16000 of 2022

and

CrI.M.P.No.9030 of 2022

Subhash Chandra Bhargava

...Petitioner

Vs

Kotak Mahindra Bank Limited
5th Floor, Samson Towers, 4021,
Pantheon Road, Egmore,
Chennai - 600 008.
represented by its Authorised Representative
Mr.Ragothaman

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973, praying to call for the entire records in C.C.No.2337 of 2019 pending on the file of FTC IV, Metropolitan Magistrate, George Town, Chennai and quash the same as against the petitioner/A5.

For Petitioner : Mr.H.Siddarth

For Respondent : Mr.E.Om Prakash, Senior Counsel
for Mr.M.Arunachalam

ORDER



This Criminal Original Petition has been filed challenging the proceedings initiated by the respondent against the petitioner under Section 138 of Negotiable Instruments Act.

2. Heard Mr.H.Siddarth, learned counsel for petitioner and Mr.E.Om Prakash, learned Senior Counsel appearing for respondent.

3. The main ground that was urged by learned counsel for petitioner is that the petitioner was only a non-executive independent director and he was not involved in the day-to-day affairs of the company. To substantiate the same, Form-32 dated 01.10.2007 issued by the Registrar of Companies was relied upon. After the coming into force of the Companies Act, Form-DIR-12 is submitted by the Director and Form-DIR-11 is submitted by the company. During the year 2019, when these forms were submitted, it is only mentioned as Director, independent and even during the resignation on 23.07.2019, the status of the petitioner is only mentioned as Director. Hence, whether the petitioner was a non-executive director at a later point of time is a matter of fact, which has to be considered only during the course of trial. Such disputed facts cannot be gone into in a quash petition.

4. The grounds raised by the learned counsel for the petitioner are all



factual in nature and it requires appreciation of evidence and this Court cannot decide the same in exercise of its jurisdiction under Section 482 of Criminal Procedure Code. It is left open to the petitioner to raise all the grounds before the Court below and the same shall be considered on its own merits and in accordance with law. This Court is not inclined to interfere with the proceedings pending before the Court below.

5. The learned counsel for the petitioner requested this Court to dispense with the presence of the petitioner. Taking into consideration, the facts and circumstances of the case, the presence of the petitioner is dispensed with and he shall be represented by a counsel, who shall cross examine the witnesses on the same day, they are examined in Chief. The petitioner shall be present before the Court below at the time of questioning under Section 313 Cr.P.C and at the time of passing of the final judgment.

Accordingly, this Criminal Original Petition is dismissed and the Court below is directed to complete the proceedings in C.C.No.2337 of 2019, within a period of three (3) months from the date of receipt of copy of

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this order. Consequently, the connected miscellaneous petition is also closed.

04.08.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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To

The FTC IV, Metropolitan Magistrate,
George Town, Chennai.

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