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Crl.O.P.No.17042 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2023

CORAM:

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

Crl.O.P.No.17042 of 2021
and
Crl.M.P.Nos.9324 and 9325 of 2021

1. M/s. Pradsen Global
represented by its Partner Senthilvelan,
No.1, 2nd Floor, Ragavan Street,
Sivasankar Nagar, Nagalkeni,
Chrompet,
Chennai.

2. Senthilvelan

...Petitioners

-Vs-

B.Selvakumar

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to the proceeding in S.T.C.No.169 of 2021 pending on the file of the Learned Judicial Magistrate, Vaniyampadi and quash the same.

For Petitioners

: Mr.G.Vinodhkumar

For Respondent

: Mr.M.S.Vigneswaran
for Mr.C.V.Kumar



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ORDER

This Criminal Original Petition has been filed calling for the records pertaining to the proceeding in S.T.C.No.169 of 2021 pending on the file of the Learned Judicial Magistrate, Vaniyampadi and to quash the same.

2. Heard the learned counsel for the petitioners and the learned counsel for the respondent and perused the materials available on record.

3. The respondent lodged a complaint for the offences under Sections 138 and 141 of Negotiable Instruments Act as against the petitioners. The crux of the complaint is that the respondent is engaged in the business of chemicals. The accused are engaged in the business of leather manufacture. The accused used to purchase the chemicals from the defacto complainant. From the year 2014-2018, they had purchased the chemicals. As on 31.03.2019, there was balance due of Rs.6,05,857/-. Towards the said due, the accused issued 12 cheques on various dates. On instructions, 8 cheques were presented for collection on 29.02.2020, 19.06.2020, 12.09.2020. However, all the cheques were returned dishonoured for the reason "Funds Insufficient". Once again other four



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cheques were presented on 07.10.2020, 16.11.2020, 28.12.2020. All the cheques were returned dishonoured for the reason “Funds Insufficient”.

After causing statutory notice, the respondent initiated proceedings under Sections 138 and 141 of NI Act. After taking cognizance in S.T.C.No.169 of 2021, the Trial Court issued summons to the accused.

4. The learned counsel for the petitioners would submit that the petitioners are arrayed as A1 and A2. The first petitioner is a partnership firm and the second petitioner is one of the partners. Though there is an another partner, the respondent failed to issue any notice to another partner and not impleaded as an accused. It is fatal to the case of the prosecution. The alleged cheques were issued for security purpose and after paying the entire amount, the cheques were misused by the respondent and initiated proceedings under Sections 138 and 141 of NI Act.

5. A perusal of records revealed that the alleged cheques were issued in the name of a partnership firm and signed by the second petitioner herein. If the complainant failed to implead the partnership firm as accused, it would be fatal to the case of the complainant. Therefore,



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not adding another partner as accused is not fatal to the case of the prosecution, since the first accused is the partnership firm and second accused is the Managing partner of the first accused and he only signed the cheque. Another partner might not have been involved in the day to day affairs of the partnership firm. Therefore, the respondent had rightly excluded another partner from initiation of proceedings under Sections 138 and 141 of NI Act. Further, in order to substantiate the contention that the cheques were issued for security purpose, the petitioners have to let in evidence before the Trial Court during the Trial. That apart, no material was produced before this Court in order to substantiate the said contention.

6. Hence, this Court finds no grounds to quash the proceedings initiated by the respondent and this Court is not inclined to quash the proceedings in S.T.C.No.169 of 2021 pending on the file of the Learned Judicial Magistrate, Vaniyampadi.

7. Accordingly, this Criminal Original Petition is dismissed.

Consequently, connected Miscellaneous petitions are closed.



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Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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G.K.ILANTHIRAIYAN. J.

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To
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The Judicial Magistrate, Vaniyampadi.

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and
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