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Crl.OP.No.20861 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2023

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.20861 of 2022

and

Crl.M.P.Nos.13640 and 13643 of 2022

C.Ebenezer

... Petitioner

Vs.

R.Sathyamoorthy

... Respondent

PRAYER: This Criminal Original Petition filed under Section 482 of Cr.P.C., to quash the proceedings against the petitioner arrayed as 6th accused in S.T.C.No.82 of 2022 pending before the Judicial Magistrate Fast Track Court No.II, Erode filed by the respondent/complainant herein under Section 138 of the Negotiable Instruments Act.

For Petitioner : Mr.P.Ravi Shankar Rao

For Respondent : Mr.D.Karthick



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ORDER

This Criminal Original Petition is filed to quash the proceedings against the petitioner arrayed as 6th accused in S.T.C.No.82 of 2022 pending before the Judicial Magistrate Fast Track Court No.II, Erode filed by the respondent/complainant herein under Section 138 of the Negotiable Instruments Act.

2. Learned counsel for the petitioner submitted that, respondent instituted a case under Section 138 Negotiable Instruments Act against the petitioner and five other accused in S.T.C.No.82 of 2022 on the file of learned Judicial Magistrate, Fast Track Court No.II, Erode.

3. The short point canvassed by the petitioner in this petition is that, petitioner who is shown as 6th accused in S.T.C.No.82 of 2022 was no more a Director of 1st accused company namely Spring Field Shelters Private Limited. The reason is that, he resigned from the post of Director in the year 2013, with effect from 23.02.2013. In support of his submission, he also produced copy of



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Form 32 to show that, he was no more a Director with effect from 23.02.2013 of the 1st accused company.

4. In response, learned counsel for the respondent submitted that, though the petitioner resigned from the post of Director in the year 2013, still he is liable for the transaction that had taken place when he was a Director of the company.

5. Considered the rival submissions and perused the records.

6. The reading of the complaint in S.T.C.No.82 of 2022 shows that, respondent filed this case against 1st accused Spring Field Shelters Private Limited and its Directors namely 2nd to 6th accused, for the reason that 2nd and 3rd accused borrowed a sum of Rs.4,00,000/- from the complainant, on behalf of the 1st accused, with the knowledge of 4th to 6th accused for the urgent business purpose. 1st accused handed over the cheque for a sum of Rs.4,00,000/- bearing No.403492 drawn at Axis Bank, Coimbatore dated 03.12.2018 to the discharge his liability. When the cheque was presented for collection on 03.12.2018, it was



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returned with the endorsement that “Payment stopped by drawer”. Thereafter, statutory legal notice was issued and then a complaint was filed.

7. From the reading of the complaint, it is clear that, the cheque was issued for the amount borrowed on 02.11.2018, much after the resignation of the petitioner from the post of Director of 1st accused company, which came into effect from 23.02.2013. Therefore, adding the petitioner as accused, when he was not at all a Director during the loan transaction of cheque is absolutely an abuse of process of Court. There is absolutely no material to proceed with the trial of this case against the petitioner.

8. It is seen from the reply sent by the petitioner dated 21.12.2018 that, he resigned from the post of Director of 1st accused company and also enclosed copies of his resignation letter dated 23.02.2013 and minutes of the meeting dated 11.03.2013 and Form 32 from the Registrar of Companies.



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9. Therefore, it is obvious that, despite knowing that petitioner was not at all a Director of the 1st accused company, even before the filing of the complaint, the complaint was filed against the petitioner, dragging him to Court and making him to file this petition by spending money. It is a harassment caused to the petitioner.

10. In this view of the matter, the proceedings against the petitioner in S.T.C.No.82 of 2022 is quashed. Accordingly, this Criminal Original Petition is allowed, with a direction to the respondent to pay a costs of Rs.10,000/- to the petitioner. Consequently, the connected Miscellaneous Petitions are closed.

10.02.2023

Internet : Yes / No

Index : Yes / No

Speaking/Non speaking order

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G.CHANDRASEKHARAN,J.

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To

The Judicial Magistrate Fast Track Court No.II,
Erode.

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