



Crl.O.P.No.27036 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.27036 of 2022

and

Crl.M.P.Nos.16610 & 16111 of 2022

Joseph J.N

...Petitioner

Vs.

M/s.Freight Consolidators (Madras) Pvt. Ltd.,
Rep. By Mr.J.Premnath,
Deputy Manager Credit Controller
New No.25, Old No.13, 2nd Floor,
Flowers Road, Poonamalle High Road,
Purasaiwalkam, Chennai – 600 084.

...Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to quash the Criminal Complaint in S.T.C.No.2759 of 2022 on the file of FTC-III Metropolitan Magistrate, Saidapet, Chennai against the petitioner / accused No.3.

For Petitioner : Mr.N.S.Sivakumar

For Respondent : Mr.M.Ganesan



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ORDER

The petitioner/A3 in S.T.C.No.2759 of 2022, which is pending trial before the Fast Track Court-III, Saidapet, Chennai, filed this quash petition.

2.The contention of the petitioner is that the respondent had filed a private complaint under Section 138 of Negotiable Instrument Act against the petitioner and two others representing the petitioner invoking Section 141 of the Negotiable Instrument Act.

3.The gist case of the complainant is that the complainant, M/s. Freight Consolidators (Madras) Private Limited was functioning business with the accused Company namely, Newtech International (Proprietorship) Firm concern. Even in the complaint, A1 has been described as proprietorship concern and A2 is a Chairman and Managing Director. As regards the petitioner, he has shown as Administrative Manager for a business transaction between the respondent / complainant and A1-proprietorship concern. It is seen that there was some payments to be made.



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Since the complainant was connected with the Ocean import work by the accused and on the service, the cheque for Rs.5,14,191/- issued which was covered by two invoices. When the cheques were presented for encashment, the same was returned for the reasons “funds insufficient”. Thereafter, following the statutory procedures, a complaint has been filed before the concerned Trial Court.

4.The primary contention of the petitioner is that it is not in dispute that the 1st accused is a proprietorship concern and the 2nd accused is the proprietor of 1st accused. The cheque has been issued by the proprietor as authorized signatory signed by A2.

5.As regards the petitioner, the petitioner is only an Administrative Manager and nothing more. He further submitted that except for a reference in Paragraph 2 that the petitioner was taking active part in the day to day affairs of the 1st accused concern, there is no offences against the petitioner.



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6.He would further submit that as regards invoking 141 could not attracted in a proprietorship concern and for which he relied upon the decision of the Apex Court in case of **Raghu Lakshminarayanan Vs. Fine Tubes** reported in **(2007) 5 SCC 103** wherein, referring paragraph 9 he submitted that a proprietary however, stands on a different footing and a proprietorship concern is not a Company in terms of explanation apprehended to Act 141 of the Negotiable Instruments Act. He further submitted that on a events admitted to be a firm, there is no averments against the petitioner to have actively taken part in the day to day affairs of the Company has held by the situation of this Court **S.M.S.Pharmaceuticals Ltd. Vs. Neeta Bhalla** reported in **2005 (8) SCC 89**.

7.The learned counsel for the respondent submitted that prior to filing of the complaint statutory notice was issued to the petitioner. The petitioner having received the same ought to have replied, failed to do so and now, raised such defence before this Court. In the notice, there has been specific averments made against the petitioner that he is in charge of



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the first accused firm.

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8.He further submitted that in the complaint, there has been specific averments made against the petitioner that the petitioner along with the 2nd accused was in person in charge of the day to day activities of the first accused firm. Whether the first accused is the firm or the proprietorship, it is for the petitioner to produce the relevant documents before the Trial Court, which cannot be decided in the quash petition.

9.In this case, the admitted of the case respondent complainant is that the 1st accused Company is a proprietorship concern and A2 is a proprietor. As regards the petitioner, he is an Administrative Manager. In the statutory notice, there is no averments with regard to the petitioner. In the complaint, except in Paragraph 2 wherein, the petitioner has been referred that he is in-charge of the day to day affairs of the Company along with A2, there is no nothing more. The 1st accused is a proprietorship concern is not in dispute and further the cheque is signed by A2. The petitioner not signed the cheque. The Apex Court in **Raghu**



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Lakshminarayanan Vs. Fine Tubes had clearly held that the proprietorship concern is not a Company in terms of Section 141 of the Negotiable Instruments Act.

10. In view of the same, since the petitioner is attempted to be proceeded on the strength of Section 141 of the Negotiable Instrument Act. In this case, Section 141 of the said Act cannot be invoked. Hence, the case against the petitioner/A3 alone is quashed. The learned counsel for the petitioner submitted that due to the pendency of the above petition, the trial before the Trial Court got stalled. The Criminal Original Petition is allowed as regards the petitioner/A3 alone. The Trial Court is directed to proceed with the trial with regard to the other accused as expeditiously as possible. No costs. Consequently, connected miscellaneous petitions are closed.

22.06.2023

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Internet: Yes/No

Index: Yes/No

Non-Speaking/Speaking order

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To:-

The Fast Track Court-III,
Metropolitan Magistrate,
Saidapet, Chennai



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M.NIRMAL KUMAR, J.

KKN/smn2

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