



CrI.O.P.No.29123 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CrI.O.P.No.29123 of 2019

and

CrI.M.P.No.15678 of 2019

P.Subramaniam
Partner,
“Akila Tamil Kudil”,
Venkateshwara Nagar,
Muthusamy Colony,
Sadayam, Palayam Road,
Erode 638 002

... Petitioner

Vs.

M/s.Lotte India Corporation Ltd.,
Rep by its Area Sales Executive,
Mr.K.Durai Murugan,
Head Office,
No.4/169, Rajiv Gandhi Salai (OMR Road)
Kandanchavai Bus Stop,
Perungudi Taluk, Chennai 600 096,
Branch Office,
5/245, Thadagam Road,
Kanuvai,
Coimbatore – 641 108

... Respondents



CrI.O.P.No.29123 of 2019

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to C.C.No.775 of 2017 on the file of the Judicial Magistrate Court No.VII, Coimbatore and quash the same.

For Petitioner : Mr.C.D.Sugumar

For Respondent: Mr.Adeesh Anto

ORDER

This petition has been filed to quash the private complaint filed under Section 138 of the Negotiable Instruments Act. It is the case of the complainant that the 1st accused-Firm had issued two cheques for Rs.41,680/- dated 13.03.2017 and for Rs.4,68,805/- dated 14.03.2017 in favour of the complainant. The said cheques were presented for collection and they were dishonoured for the reason “Insufficient Funds”. Though the statutory notice was issued to the accused persons, they did not make payment. Hence, the complaint.

2.The learned counsel for the petitioner submitted that the petitioner is 86 years old and he is not a partner of the 1st accused-Firm



and therefore, he cannot be said to be a person in-charge and responsible for the conduct of the 1st accused Firm.

3.The learned counsel for the respondent-Complainant drew the attention of this Court to the averments made in the complaint, where there are clear allegations to show that the 3rd accused was a partner of the 1st accused Firm and in-charge and responsible for the conduct of the 1st accused-Firm. He had also pointed out another averment made in the complaint, wherein it is stated that the 2nd accused had signed the cheques on behalf of the 1st accused with consent and concurrence of the 3rd accused. Therefore, the learned counsel for the respondent, relying upon the judgment of the Hon'ble Apex Court reported in **2022 SCC Online SC 1238 [S.P.Mani and Mohan Dairy Vs. Dr.Snehalatha Elangovan]** submitted that since there are allegations in the complaint, it is for the accused to prove his innocence during the course of trial.



4. This Court finds that there are allegations against the petitioner-Firm that he was in-charge and responsible for the conduct of the business of the 1st accused-Firm and that the cheques were signed by the 2nd accused with his consent. The petitioner also could not produce any document to show that he is not a partner of the partnership firm. Therefore, there cannot be any dispute that when there are allegations in the complaint, it is for the accused to prove that he was not in charge and responsible for the conduct of the 1st accused-Firm before the trial Court.

5. However, this Court finds that the petitioner is admittedly aged 86 years and is bed ridden. In such circumstances, the judgment of the Hon'ble Supreme Court reported in ***[Gunmala Sales Private Limited Vs. Anu Mehta and Others]* 2015 1 SCC 103** wherein, it has been held that even if there are allegations, the power of quashing can be exercised by this Court when the accused is aged or bedridden. The relevant paragraph of the judgment is extracted hereunder:

“41. c) In the facts of a given case, on an overall reading of the complaint, the High Court may, despite the presence of the



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basic averment, quash the complaint because of the absence of more particulars about role of the Director in the complaint. It may do so having come across some unimpeachable, uncontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of the process of the court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the Director. Take for instance a case of a Director suffering from a terminal illness who was bedridden at the relevant time or a Director who had resigned long before issuance of cheques. In such cases, if the High Court is convinced that prosecuting such a Director is merely an arm-twisting tactics, the High Court may quash the proceedings. It bears repetition to state that to establish such case unimpeachable, uncontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the notice of the High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out. In the absence of such evidence or circumstances, complaint cannot be quashed;



CrI.O.P.No.29123 of 2019

6. Therefore, in the instant case, admittedly the petitioner is aged 86 years. Further, in view of the submission of the petitioner that he is bedridden, applying the above principles laid down by the Hon'ble Supreme Court, this Court is inclined to quash the complaint insofar as the petitioner/A3 alone as there is incontrovertible evidence to show that he could not have been concerned with the issuance of the cheque. Accordingly, the complaint against the petitioner/A3 is quashed and the criminal original petition is allowed. The learned Judicial Magistrate No.VII, Coimbatore is directed to expedite the trial, and in any event, complete the same within a period of 3 months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

16.03.2023

Index:Yes/No

Neutral citation: Yes/no

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To

1. The Judicial Magistrate Court No.VII, Coimbatore
2. The Public Prosecutor, High Court of Madras.
3. The Section Officer, Criminal Section, High Court, Madras.

6/7



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Crl.O.P.No.29123 of 2019

SUNDER MOHAN, J

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Crl.O.P.No.29123 of 2019

16.03.2023