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Crl.O.P.No.26417 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2023

CORAM

THE HONOURABLE MR. JUSTICE Dr. G. JAYACHANDRAN

Crl.O.P.No.26417 of 2023

Sri Srinivasa Export,
Rep. by its Prop. S.Sriram.

... Petitioner

Vs.

A.K.Creations (P) Ltd.,
Rep.by its Managing Director,
Sanjeev Kumar

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to set aside the order passed by the Learned District Sessions Judge, Erode in the Crl.R.C.31 of 2022 Reversing the order in Crl.M.P.No.3308 of 2022 on the file of Judicial Magistrate (Fast Track Court No.II) at Erode.

For Petitioner : Mr.M.Soundar Vijay Arul Ram

For Respondent : No Appearance



CrI.O.P.No.26417 of 2023

ORDER

The accused filed CrI.M.P.No.3308 of 2022 on the file of Judicial Magistrate (Fast Track Court No.II) at Erode, under Section 91 and 311 Cr.P.C., to issue a summon to the Registrar of Companies, New Delhi, to produce the document relating to the dissolution of Accused/Respondent's company and it was dismissed by the Trial Court. Aggrieved by the same, the accused filed Cr.R.C.No.31 of 2022 before the District & Sessions Court and the said Cr.R.C. was allowed.

2. This Petition is filed under Section 482 Cr.P.C., by the complainant, challenging the order passed by the Learned District Sessions Judge, Erode in the CrI.R.C.31 of 2022.

3. The documents and the witnesses sought to be summoned, in CrI.M.P.No.3308 of 2022 are pertaining to the dissolution of the company which issued the cheque and the subject matter of the criminal case is pending under Section 138 of NI Act. While the Trial Court thought fit that since the criminal prosecution was initiated before the order of dissolution, those documents and witnesses are irrelevant to the case. However, the learned District and Sessions Judge of Revision had allowed the application



CrI.O.P.No.26417 of 2023

taking note of the fact that the issuance of cheque and the process of dissolution of the company were, in and around, of the same period, therefore, it is necessary for proper appreciation of the complaint.

4. The apprehension of the counsel appearing for the petitioner / complainant is that by introducing new facts and evidence, the complainant is making an attempt to absolve his liability and therefore, the same should not be entertained.

5. The order passed by the District and Sessions Judge, allowing the application to summon the documents and examining witnesses, will no way tantamount to absolving liability of the accused persons in this case. It is only to affirm the fact of dissolution of the company and nothing more. As far as the issuance of cheque for enforceable liability and the presumption under the statute is concerned, dissolution cannot be whittled down by new facts introduced alone, which may or may not have any relevance to the liability. Hence, the petition is liable to be dismissed.

6. It is to be noted that the Trial Court, while dismissing the



Crl.O.P.No.26417 of 2023

application, has also taken note of the conduct of the respondent herein, that he had been protracting the trial by filing one application after another.

Though, in the order impugned, the conduct of the accused is not a relevant point for deciding application under Section 91 and 311 Cr.P.C., the fact remains that the matter is pending for more than five (5) years and therefore, the Trial Court is directed to complete the trial within a period of three (3) months from the date of receipt of a copy of this order.

7. With the above observations, this criminal original petition is dismissed.

01.12.2023

Index : Yes/No
Neutral Citation : Yes/No
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To



CrI.O.P.No.26417 of 2023

1. Judicial Magistrate (Fast Track Court No.II),
Erode.

2. District Sessions Judge, Erode.

3.The Public Prosecutor,
High Court of Madras,
Chennai.



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Crl.O.P.No.26417 of 2023

Dr. G. JAYACHANDRAN. J.,

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Crl.O.P.No.26417 of 2023

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