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Crl.O.P.No.3485 of 2024

In the High Court of Judicature at Madras

Dated : 26.3.2024

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Criminal Original Petition No.3485 of 2024
& Crl.M.P.No.2579 of 2024

1.G.Sundararajan

2.S.Diwakar

...Petitioners

Vs

T.Karunakaran

...Respondent

PETITION under Section 482 of the Criminal Procedure Code
praying to call for the records in S.T.C.No.10963 of 2023 pending on
the file of the Metropolitan Magistrate Fast Track Court-2 at Allikulam,
Chennai against the petitioners and quash the same.

For Petitioners : Mr.A.Balasingh Ramanujam
For Respondent : Mr.N.Tamizhanban

ORDER

This is a petition filed by the petitioners seeking to quash the
proceedings in S.T.C.No.10963 of 2023 pending on the file of the



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Metropolitan Magistrate Fast Track Court-2 at Allikulam, Chennai (for brevity, the Court below).

2. Heard the learned counsel for the petitioners and the learned counsel appearing for the respondent.

3. The respondent/complainant filed a private complaint against the petitioners for an offence under Section 138 of the Negotiable Instruments Act (for short, the Act).

4. The main ground that was urged by the learned counsel for the petitioners is that admittedly, it is only the second petitioner, who was the signatory to the cheque whereas the complaint has been filed against the first petitioner also, who is none other than the father of the second petitioner. Hence, it is contended that since the first petitioner (A1) is not the drawer of the cheque, he cannot be made to undergo the trial in this case merely on the ground that he had participated in the affairs of the proprietorship concern.

5. Per contra, the learned counsel for the respondent submits



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that both the petitioners were involved in the affairs of business, that both of them, in fact, entered into a memorandum of understanding on 18.10.2022 whereby they agreed to settle the entire amount of Rs.16 lakhs, that out of the said sum of Rs.16 lakhs, a sum of Rs.7 lakhs was settled and that they agreed to settle the balance amount of Rs.9 lakhs also.

6. It is brought to the notice of this Court that out of the said balance amount of Rs.9 lakhs, another sum of Rs.1 lakh was subsequently settled and that the remaining amount to be settled is Rs.8 lakhs.

7. The learned counsel for the respondent has further contended that the first petitioner (A1) already underwent trial in C.C.No.441 of 2018 and was convicted and sentenced for an offence under the Act by the Court below by order dated 25.2.2019, that this was further confirmed on appeal filed by the first petitioner (A1) by judgment dated 14.6.2022 in Criminal Appeal No.124 of 2019 on the file of the 20th Additional Sessions Court, Allikulam, Chennai and that only pursuant to the said judgment dated 14.6.2022, the said



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memorandum of understanding dated 18.10.2022 was entered into between the parties.

8. In the considered view of this Court, the pre-requisite for proceeding against a person for an offence under Section 138 of the Act is that the concerned person must be the drawer of the cheque. The only exception is where the accused is brought within the scope of Section 141 of the Act.

9. Admittedly, the drawer of the cheque in the present case is the second petitioner (A2). Hence, the first petitioner, who has been arrayed as A1 cannot be prosecuted even though he was actively involved in the affairs of the business and even if he was a party to the said memorandum of understanding.

10. In so far as the second petitioner (A2) is concerned, the learned counsel for the petitioners raised certain factual disputes. This Court cannot go into such factual disputes in exercise of its jurisdiction under Section 482 of the Criminal Procedure Code. The second petitioner has to necessarily raise all the defences only before the



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Court below and they will be considered on its own merits and in accordance with law.

11. In the light of the above discussions, the proceedings in S.T.C.No.10963 of 2023 pending on the file of the Metropolitan Magistrate Fast Track Court-2 at Allikulam, Chennai is quashed in so far as the first petitioner (A1) is concerned. The Court below is directed to proceed further with the case as against the second petitioner (A2). The entire proceedings shall be completed within a period of six months from the date of receipt of a copy of this order.

12. The above criminal original petition is partly allowed to the extent indicated above. Consequently, the connected Crl.M.P. is closed.

26.3.2024

To
1.The Metropolitan Magistrate,
Fast Track Court-2, at
Allikulam, Chennai.
2.The Public Prosecutor,
High Court, Madras.

RS

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RS

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