



Crl.O.P.No.4448 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.No.4448 of 2022
and
Crl.M.P.Nos.2257 & 2259 of 2022

Shanthi Electricals,
rep. by its proprietor Mr.Prakash

... Petitioner

Versus

Wipro Enterprises Pvt. Ltd.,
rep. by its Senior Account Executive
Mr. S.Raghavan

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for entire records in connection with the C.C.No. 3579 of 2019 on the file of Fast Track Court No.III, Metropolitan Magistrate, Saidapet, Chennai and quash the criminal proceedings pending on the file of Fast Track Court No.III, Metropolitan Magistrate, Saidapet, Chennai in C.C.No.3579 of 2019.



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For Petitioner : Mr.V.Parthiban
For Respondent : No appearance

ORDER

The petitioner herein is the accused in C.C.No.3579 of 2021 and he preferred this Criminal Original Petition seeking to quash the proceedings in C.C. No.3579 of 2019 on the file of learned Fast Track Court No.III, Metropolitan Magistrate, Saidapet, Chennai, which was filed by the respondent/defacto complainant by invoking Sec.190(1)(a) of Cr.P.C. for an offence under Sec.138 of N.I.Act, 1881 and under Sec.420 of I.P.C.

2. The petitioner herein is an accused in private complaint lodged in C.C.No. 3579 of 2019 based on a complaint lodged by the respondent stating that the petitioner purchased materials from the company through two invoices and issued following cheques :-

(i) Cheque No. 820700 dated 04.01.2017 for Rs.6640.13 paise



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(ii) Cheque No. 820699 dated 01.01.2017 for Rs.6,95,000.00

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When the cheques were presented for payment, the same were dishonoured as “payment stopped by drawer” on 05.01.2017 and thereafter, a demand notice was sent by the respondent on 25.01.2017, for which reply was sent by the petitioner on 13.02.2017. Thereafter, the respondent preferred a complaint under Sec.138 of Negotiable Instruments Act against this petitioner.

3. The learned counsel for petitioner would submit that there is no proof for the goods supplied to the petitioner concern and the same was intimated to the respondent through email on 22.11.2016. Thereafter, since no goods was supplied, stop payment was given under the petitioner's instructions. As the goods was not supplied, there is no legal liability between the petitioner and the respondent. But, the learned Magistrate taken the complaint on file without any basic materials. Hence, he prayed to quash the proceedings in C.C.No. 3579 of 2019. In support of his contentions, the learned counsel relied on the ratio laid down in the authority reported in **1998 (3) Crimes 337 in the case of E.Adarsh Rao vs. M/s.Tamil Nadu Electricals rep. By its Manager,**



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wherein this court held as follows :-

“Negotiable Instruments Act 1881 – Sec.138 and 142 – cheque drawn in favour of respondent, sole proprietorship concern dishonoured for insufficient funds – complaint filed by the Manager of concern – No authorisation letter or power of attorney on behalf of complainant was produced before Magistrate at the time of taking cognizance – complaint was not maintainable.

Negotiable Instruments Act, 1881 – Sec. 138/142 – Cheque issued in name of proprietorship concern – Proprietor or owner of said concern is the affected party and he can only file complaint - Proprietary concern in its name cannot maintain complaint.”

Furthermore, he has also relied the ratio laid down in the authority reported in **1998 (3) Crimes 343** in the case of **Tara Chand vs. M/s.Dabkauli Trading Company**, wherein the **High Court of Punjab and Haryana** held as follows :-

“Negotiable Instruments Act, 1881, - Sections 138 and 141 – cheque issued by a partner on behalf of the firm bounced – all three partners summoned on complaint for offence – no ioto of allegations in complaint that other two partners were incharge and responsible for conduct of



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business firm – evidence to that effect during preliminary evidence cannot make a fresh premise to summon and prosecute those two partners – summoning order against two partners was liable to be set aside.”

4. In spite of notice, no representation on the side of respondent/defacto complainant. However, on seeing the facts, it reveals that as per the complaint averments, the goods were supplied to another concern Sakthi Electricals and there is an averment in para 8 that goods were received by Sakthi Electricals on behalf of Shanthi Electricals, the petitioner herein. Furthermore, even in para 8 of complaint averment also reveals that nearly about four times, the goods were received by Sakthi Electrical for the tune of Rs.14,00,000/-, but admittedly, both the concerns viz., Sakthi Electricals and Shanthi Electricals are in the very same address at No.660, Anna Salai, Thousand Lights, Chennai. When it was enquired, the learned counsel for petitioner was informed that they are not concerned with Sakthi Electricals. However, the averment reveals that both were running in the same address, which needs detailed investigation. Moreover, in support of his contentions, the learned



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counsel relied on the ratio laid down in the authorities by the **High court of Punjab and Haryana** reported in **1998 (3) Crimes 343** in the case of **Tara Chand vs. M/s. Dabkauli Trading Company**, and also the ratio laid down by this court reported in **1998 (3) Crimes 337 in the case of E.Adarsh Rao vs. M/s.Tamil Nadu Electricals rep. By its Manager**, but those judgments are not applicable to the facts and circumstances in the instant case, which needs evidence. Hence, this petition is liable to be dismissed. Accordingly, this Criminal Original Petition is dismissed. Liberty is granted to the petitioner to raise all the defence before the trial court. Consequently, the connected Criminal Miscellaneous Petitions are closed.

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