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Crl.O.P.No.8109 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:02.04.2024

CORAM:

THE HONOURABLE DR JUSTICE G.JAYACHANDRAN

Crl.O.P.No.8109 of 2024
&
Crl.M.P.Nos.5902 & 5903 of 2024

M/s Vishal Construction,
Rep.by its Proprietor Mr.Ramakrishnan,
No.B-213, B Block, Prabhu Emerald,
3rd Floor, Behind Vishal Mega Mart,
Dabolim, Goa-403 801.

.. Petitioner

/versus/

M/s United Company,
Represented by its Partner,
Tmt.D.Deepa, D/o P.K.Devadoss,
No.5, Second Cross Street,
Gandhi Nagar, Puducherry-605 009.

.. Respondent

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records relating to S.T.C.No.1421 of 2019 on the file of the Judicial Magistrate-II at Puducherry and quash the same as against the petitioner.

For Petitioner :Mr.S.Giritharan



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ORDER

The petitioner herein, who is the Proprietor of M/s Vishal Construction, is facing criminal prosecution under Section 138 of the Negotiable Instruments Act, 1881, since four cheques given by him in favour of the complainant got dishonoured for want of fund.

2. According to the learned counsel appearing for the petitioner, the petitioner was a former Power Agent of the complainant company which undertook the contract from Central Public Works Department, to construct swimming pool in Goa. The said project had faced some difficulty, including prosecution by the Labour Department and non-payment of wages. As a consequence, the power agent got terminated. As per the complaint, the scrutiny of the account disclosed cheating of around Rs.25 lakhs from the petitioner herein and therefore, the cheques were given to avoid criminal prosecution.

3. However, the complainant submits that the signed blank cheques, which were kept in the site been misused by the complainant. Some of the e-mail communications in this regard also relied upon to



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impress upon the Court that the cheques were not given to discharge any enforceable liability and there was no transaction between the complainant and the petitioner what soever. However, on the face of the complaint and the affidavit filed in support of the complaint, it is *prima facie* made out for the offence under Section 138 of the Negotiable Instruments Act, 1881. Hence, this Court has taken cognizance. All the points which have been now agitated by the learned counsel for the petitioner are to be tested in the trial. Though it is very impressive, this Court cannot quash the complaint in exercise of power under Section 482 of Cr.P.C, when there is *prima facie* material available to prosecute the petitioner and in view of the reverse burden on the petitioner herein, it is the duty of the petitioner to rebut the presumption against him. Hence, this Criminal Original Petition is dismissed and any observation made by this Court shall not prejudice to decide the case on merits and all the points raised in the quash petition can be agitated before the trial Court.



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4. The learned counsel appearing for the petitioner submits that the petitioner is the resident of Goa and his personal appearance of each and every hearings is difficulty and the same may be dispensed with.

5. The said request may be placed before the trial Court and the trial Court shall sympathetically consider the request and unless and until his personal appearance is required for identification, questioning and judgment, his personal appearance shall be dispensed with. Consequently, connected Miscellaneous Petitions are closed.

02.04.2024

Index:yes/no
Speaking order/non speaking order
Neutral Citation:yes/no
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To

The Judicial Magistrate-II at Puducherry.



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DR.G.JAYACHANDRAN,J

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