



Crl.O.P.No.6581 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2024

CORAM:

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

Crl.O.P.No.6581 of 2022

and

Crl.M.P.No.3731 of 2022

D.Arun Babu

... Petitioner

Versus

P.Nagaraj

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.687 of 2018 on the file of the learned Fast Track Judicial Magistrate Court at Ambattur and quash the same.

For Petitioners : Mr.S.Suresh

For Respondent : Mr.A.Thirumaran



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ORDER

This Criminal Original Petition has been filed to quash the charge sheet in C.C.No.687 of 2018 on the file of learned Fast Track Judicial Magistrate Court, Ambattur.

2. Heard both sides.

3. The case of the respondent is that both of them are friends and the petitioner induced the respondent to invest money in the business run by the accused 1 to 3 under the name and style of M/s.Integrated Process Oil and Gas Pvt. Ltd. and promised to pay interest at the rate of 12% per annum. As the respondent is a retired bank employee, he has invested his retirement benefits along with other loan amount, totally a sum of Rs.77,50,000/- through bank transactions as well as by way of cash in the 1st accused company. But, contrary to their promise, they have paid only a part sum of money was paid as interest till July 2017. Hence, the respondent demanded for payment of interest as assured by the accused, thereby, they have issued 3 cheques for part of payment, but the same were returned as insufficient funds from the bank. Thereafter, he has



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issued a legal notice dated 10.09.2018 to them, which were returned with an endorsement as 'left', 'refused' and 'unclaimed' respectively. Aggrieved over the same, the respondent preferred a complaint under Sec.200 of Cr.P.C. for the offence under Sec.138 of Negotiable Instruments Act in C.C.No.687 of 2018 before the learned Fast Track Judicial Magistrate Court, Ambattur. Now, to quash the said complaint, the 4th accused preferred this Criminal Original Petition.

4. The learned counsel for petitioner would submit that as he is one of the signatory of the cheque, the proceedings initiated against him is vexatious one and prayed to quash the proceedings. To that effect, he has relied the Memorandum of Association and Articles of Association.

5. By way of reply, the learned counsel for respondent would submit that the petitioner is his family friend and the petitioner persuaded the respondent to invest money in their business and promised to pay interest at the rate of 12% per annum, thereby he has paid the amount through bank transactions. The learned counsel for petitioner raised



objections stating that he is not a party to the proceedings. Moreover, he has not received any amount from the respondent and to that effect, he has relied the three cheques dated 01.09.2018, which were not issued in the individual name of petitioner, on the other hand, it was issued on behalf of M/s. Integrated Process Oil and Gas Pvt. Ltd. So, he is no way connected with the present case and the transactions relied on by the respondent as such is vexatious one. In support of his contentions, the learned counsel relied on the ratio laid down in the authority reported in **2018 (2) MLJ (Crl.) 418**, in the case of **S.Veerappan vs. K. Sundar**, wherein this Court in para 10 held as follows :-

“10. At the same time, it is for this court to decide whether the complainant has proved his case first that the cheque was issued in lieu of a legally enforceable debt or not. In this regard, both the courts below have considered as the revision petitioner/accused had not sent any reply notice to the statutory demand notice issued by the respondent/complainant, it has to be presumed that the cheque was issued in lieu of the legally enforceable debt. However, the law laid down by this Hon'ble Court as well as the Hon'ble Supreme Court that the mere failure of the



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accused in responding the statutory demand notice, no liability can be fixed upon the accused.”

He has also relied on the ratio laid down in the authority reported in **2023 SCC Online SC 1299**, in the case of **Siby Thomas vs. Somany Ceramics Ltd.**, wherein the Apex Court in para 16 held as follows :-

“16. In view of the factual position relating the averments revealed from the complaint as aforesaid it is relevant to refer to the decisions relied on by the learned counsel appearing for the appellant. In the decision in Anita Malhotra's case (supra) in paragraph 22 it was held thus :-

22. This Court has repeatedly held that in case of a Director, the complaint should specifically spell out how and in what manner the Director was in charge of or was responsible to the company for conduct of its business is not sufficient. (vide National Small Industries Corpn. Ltd. vs. Harmeet Singh Paintal). In the case on hand, particularly, in para 4 of the complaint, except the mere bald and cursory statement with regard to the appellant, the complainant has not specified her role in the day-to-day affairs of the company. We have verified the



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averments as regard to the same and we agree with the contention of Mr.Akhil Sibal that except reproduction of the statutory requirements the complainant has not specified or elaborated the role of the appellant in the day-to-day affairs of the company. On this ground also, the appellant is entitled to succeed.”

By relying the ratio laid down in the above referred cases, the learned counsel for petitioner would submit that he is no way connected with the transaction nor he is signatory of the cheque and there is no material to fix the liability on him. Hence, he is entitled for quashing the proceedings.

6. On seeing the facts, it reveals that the respondent is having business dealing with accused and for business purpose, they have induced the respondent to invest money in their firm and also received the amount. However, the respondent demanded to repay the amount as assured by the petitioner, they have issued cheques and the same were returned by the bank as insufficient funds. According to the petitioner, he



is no way connected with the present case as an individual person and cheques were signed by him only as an authorised signatory in the name of M/s.Integrated Process Oil and Gas Pvt. Ltd. Therefore, there is no specific allegation or proof for payment of money to the petitioner herein. However, when the proceedings was initiated against the respondent, no reply was given by this petitioner, which is an admitted fact. On seeing the facts, whether he is a necessary party to the proceedings or not can be decided only at the time of trial.

7. Furthermore, on perusal of authorities relied on by the learned counsel for petitioner, it reveals that it is true, there is no reply given by the petitioner, however, on seeing the facts relied by the defacto complainant that there was a transaction between them and he has also participated in the said transaction. Therefore, it needs detailed trial and at this stage, he cannot be exonerated as there is no liability on him. Hence, the authorities relied on by the petitioner's counsel are not applicable to the facts of instant case. Therefore, this Petition is liable to be dismissed. Accordingly, this Criminal Original Petition is dismissed as



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no merit. Consequently, connected Criminal Miscellaneous Petition is closed.

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