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Crl.O.P.No.7425



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

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THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.7425 of 2023

and

Crl.M.P.Nos.4713 and 4714

Dinaker

... Petitioner

Vs.

1. Rajkumar Sethupathy
2. Roshini Dinaker Productions
3. Roshini Dinaker

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, calling for the records in C.C.No.3395 of 2019 pending on the file of the III Fast Track Metropolitan Magistrate at Saidapet, Chennai and to quash the same as against this petitioner.

For Petitioner : Mr.M.Soundar Vijay Arul Ram

For R1 : Mr.J.Srinivasan
for M/s. Rugan & Arya

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.3395 of 2019 pending on the file of the III Fast Track Metropolitan



Magistrate, Saidapet, Chennai.

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2. The 1st respondent / complainant has filed a private complaint against 3 accused persons for offence under Section 138 of the Negotiable instrument Act. The petitioner who has been arrayed as A2 has filed this quash petition on the ground that the cheque was issued by A3 in her individual capacity and whereas, the petitioner has been added as an accused (A2). Therefore according to the petitioner since the petitioner is not even the drawer of the cheque, criminal proceedings cannot be continued as against the petitioner.

3. Heard Mr.M.Soundar Vijay Arul Ram, learned counsel for the petitioner and Mr.J.Srinivasan , learned counsel for the 1st respondent.

4. The learned counsel for the 1st respondent / complainant submitted that the petitioner was a part of the entire transaction and the petitioner was aware about the amount that is payable to the complainant. The petitioner was also actively involved when the cheque was drawn in favour of the complainant. The amount that was owed to the complainant was not repaid and the cheque that was deposited was also dishonoured for the reason “funds



insufficient". Therefore the learned counsel submitted that the petitioner has to undergo trial and prove his innocence.

5. The private complaint has been filed based on the dishonour of the subject cheque bearing no. 682485007 dated 15.07.2018. This cheque has been drawn in favour of the 1st respondent / complainant by the 3rd respondent in her individual capacity. This cheque was not issued in favour of the petitioner by the partnership firm and it was issued only by the 3rd respondent in her individual capacity.

6. In order to sustain a complainant under Section 138 of the Negotiable instrument Act, it can be prosecuted only as against the drawer of the cheque. The only exception is whether the case is brought within the scope of Section 141 of the Negotiable instrument Act. To bring the case within the scope of Section 141 of the Negotiable instrument Act, the cheque should have been issued on behalf of the company or a partnership firm in which case, the person who is in-charge of the day-to-day affairs of the company / firm can be made as accused even if they are not the signatories. In the instant case, the cheque has been issued only by the 3rd respondent in her individual capacity. Admittedly, the petitioner is not the drawer of the cheque.



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7. In the light of the above discussion, the continuation of the proceedings as against the petitioner (A2) is unsustainable and the same requires the interference by this Court. Accordingly, the proceedings in C.C.No.3395 of 2019 pending on the file of the III Fast Track Metropolitan Magistrate at Saidapet, Chennai is hereby quashed insofar as the petitioner is concerned. There shall be a direction to the III Fast Track Metropolitan Magistrate at Saidapet, Chennai to proceed further with the complaint as against A3 and dispose of the case within a period of three months from the date of receipt of a copy of this order.

8. In the result, the Criminal Original Petition is allowed with the above directions. Consequently, the connected Miscellaneous Petitions are closed.

09.01.2024

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

Note: Issue order copy by 12.01.2024

To

The Public Prosecutor,



Madras High Court,
Chennai.

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N. ANAND VENKATESH, J.

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