IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2024

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THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.No.13257 of 2022
and
Crl.M.P.Nos.7119 & 7121 of 2022

Panneerselvam ... Petitioner

Vs.

1.M/s.Bajaj Finance Limited
Rep by its Power of Attorney Agent,
Mr.S.Saravanabhavan,
Unit 804-806, 8th Floor,
Delta Wing, Raheja Towers,
No.177, Anna Salai,
Chennai-600 002.

2.Mount Enterprises Pvt Ltd.,
Earlier Address
No.93, Sundaraiah Street,
T.V.Puram, Ponneri Taluk,
Thiruvallur District – 601 204.

Now corporate Office at
No.83/3B, Karumbukuppam Village,
Opp.Autolac,
SIPCOT, Gummidipoondi-601 201. ... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records of the proceedings in C.C.No.6995 of 2021 on the file of XIV Metropolitan Magistrate, Egmore and quash the same.

For Petitioner : Mr.R.Venkatesulu

For R1 : Mr.M.Arunachalam
Ms.M.Nagalakshmi

For R2 : Service awaited

O R D E R

This petition has been filed to quash the C.C.No.6995 of 2021 on the file of XIV Metropolitan Magistrate, in which cognizance was taken for the offence punishable under Sections 25 of the Payment and Settlement System Act, read with 138 of the Negotiable Instrument Act.

2. The case of the prosecution is that, the 1st accused is the company and the 2nd accused is the Directory of the said Company, stating that the 2nd accused on behalf of A1 approached the defacto complainant and sought for PWRC loan based on the reputation and assurance given by the accused. The complainant has sanctioned the loan on 30.10.2017 and entered into loan agreement for a sum of Rs.23,823,200/- and agreed to repay the loan

amount along with interest in 97 installments through the Electronic Clearance System (ECS). As per the agreed terms and conditions between the accused and the complainant, the Electronic funds transfer Mandate effected on 16.12.2020 in respect of the equated monthly installment amounting to Rs.34,399.00/- could not be completed on the ground of 'Balance Insufficient'. The intimation of such dishonour of electronic funds transfer has been received by the complainant and he issued notice to the 1st accused which was returned with an endorsement “as left” and for the 2nd accused notice has been served but not honoured the Mandate. Challenging the said complaint now the 2nd accused filed the present complaint for the reason that he was resigned on 06.05.2019 from the date onwards the other Directors of A1 accused company paid the monthly payments till the alleged offence dated 16.12.2020 as he resigned from the Electronic Fund Transfer Company. He further submitted that he has been falsely implicated in this case and it is unnecessary party to the proceedings. Besides, he has not committed any default in payment, the offence alleged against the petitioner as it is vexatious one. Hence, he prays to quash the proceedings against him.

3. The learned counsel for the 1st respondent submitted that in the Mandate alone petitioner signed in the loan agreement as a Director of a company, therefore, he is liable for non payment, after issuance of the notice the respondent has rightly initiated the proceedings. Therefore he raised objections to quash the proceedings.

4. However, to support his contention petitioner relied the Judgement reported in ***(2011) 3 Supreme Court Cases 351*** **in the case *of Harshendra Kumar D. vs. Rebatilata Koley and others,*** in which reads as follows:

> *"A Negotiable instruments Act, 1881 – Ss.138 and 141 – Dishonour of Cheque – offence by company -proceedings against director who had resigned prior to offence allegedly committed by company – Relegating him to face trial-untenability – held, an ex-Director cannot be made accountable and fastened with liability for anything done by company after acceptance of his resignation by company – on facts, resignation of appellant as Director of Company was accepted and notified to Registrar of Companies in prescribed form (Form 32) – on date when offence was committed by company, appellant was neither director of company nor had anything to do with affairs of Company – Hence, held, if*

Criminal complaints are allowed to proceed against appellant, it would result in gross injustice and tantamount to abuse of process of Court – Hence quashed -Corporate Laws – Company Law – Corporate Criminal liability – Ex-Director, held cannot be made liable for acts of company post his resignation – Companies Act, 1956 – S.291 Criminal Procedure Code."

- Relying the said proposition, petitioner contended that the 1st respondent is not entitled to fasten with liability and therefore he prays to quash the proceedings.

5. As rightly pointed out by the learned counsel for the 1st respondent, the authority relied on by the petitioner is not applicable to the facts on the present case as it relate to 138 of NIA proceedings, but case in hand have Electronic Funds transfer mandate agreement. The present Director, however has not been added as a party to the proceedings, so the defacto complainant is directed to implead the present Director to avoid further complications. Liberty is given to the petitioner to file an appropriate petition to discharge him from the proceedings, in the manner known to law before the trial Court.

T.V.THAMILSELVI, J.

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6. With the above direction this Criminal Original Petition is dismissed as no merits Consequently, the connected miscellaneous petitions are closed.

20.03.2024

Index: Yes/ No
Neutral Citation: Yes/No
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