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Crl.O.P.No.8731 of 2



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.8731 of 2023
and
Crl.M.P.Nos.5598 and 5593 of 2023

1. Kamalam

2. Ammaiyappan

3. Prashanth

4. Ananthi

... Petitioners

Vs.

M/s. R.S.Enterprises (India) Private Ltd.,
Rep. by its Director cum Power Holder,
Sri.manishkumar Bajaj,
S/o. Ram Swarup Bajaj,
No.9, 3rd Street, Indhira Nagar,
Murungapalayam, Avnashi Road,
Tirupur – 641 603.

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, calling for the records in the private complaint in STC.No.2500 of 2022 pending before the learned Judicial Magistrate 1st Court, Tirupur and quash the same.

For Petitioners : Mr.L.Murali Krishnan

For Respondent : M/s.R.Lakshmi Ratan



ORDER

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This quash petition has been filed by A3 to A6 to quash the proceedings pending before the Court below in STC.No.2500 of 2022 pending on the file of the learned Judicial Magistrate 1st Court, Tirupur.

2. The respondent filed a private complaint against the company and its Directors for offence under Section 138 of the Negotiable Instrument Act on the ground that the accused had purchased certain materials on credit basis from the complainant and they did not settle the liability. Towards this liability, a cheque was drawn in favour of the respondent / complainant. When this cheque was presented for collection, it was returned with the endorsement “funds insufficient”. After service of statutory notice, the complaint came to be filed before the Court below.

3. A3 to A6 who have filed this quash petition have raised the ground that there is absolutely no allegation in the complaint explaining in what manner the petitioners are in-charge of the day-to-day affairs of the company. The learned counsel for the petitioners in order to substantiate the said submission relied upon the judgment of the Apex Court in the case of



Siby Thomas -vs- Somany Ceramics Ltd., reported in (2023) SCC Online SC 1299.

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4. Per contra, the learned counsel for the respondent / complainant submitted that the petitioners were also in-charge of the day-to-day affairs of the company and that necessary averments have been made in the complaint at paragraph nos. 2 and 5 and hence, the petitioners will have to necessarily face trial and establish their defence. The learned counsel in order to substantiate his submission, relied upon the judgment of the Apex Court in the case of ***S.P. Mani and Mohan Dairy -vs- Dr. Snehalatha Elangovan*** reported in (2022) SCC Online SC 1238.

5. This Court has carefully considered the submissions made on either side and the materials available on record.

6. It is necessary to extract the relevant portions in the complaint, which was relied upon by the learned counsel for the respondent / complainant:

“ 2. The complainant submits that the 1st accused is a private limited company proprietor concern and the accused No.2 to 6 is the Directors and in-charge of the day to day affairs of the



company and doing business at S.F.No.1726, Amaravathy Nagar, Andan Kovil Post, Karur – 639 002.

5. On various demands by the complainant, the 2nd accused as a Director of 1st accused and with the consent of accused 3 to 6 have issued two cheques bearing No.659570 dated 10.09.2020 for Rs.2,00,000.00 and another bearing No.0659571 dated 17.09.2020 for a sum of Rs.2,00,000.00 drawn on State Bank of India, SME Siruthozhil Branch, Karur towards the part of the amount due to the complainant at their office.

At paragraph 2 of the complaint, there is a general statement to the effect that A2 to A6 are the Directors and in-charge of the day-to-day affairs of the company. In paragraph 5, it has been stated that the cheque was issued with the consent of A3 to A6. It is an admitted case that the signatory of the cheque on behalf of A1 company was A2. This Court has to see as to whether the requirements under Section 141 of the Negotiable Instrument Act has been fulfilled in order to enable the continuation of the criminal proceedings as against the petitioners (A3 to A6).

7. It is now too well settled that it is not enough to merely state that some of the Directors are in-charge of the day-to-day affairs of the company.



It must also be stated as to how and in what manner they were responsible for the conduct of the day-to-day affairs of the company. The law on this issue is now too well settled and the judgment that was cited by the learned counsel for the petitioner squarely covers this issue.

8. The judgment that was relied by the learned counsel for the respondent / complainant will not apply to the facts of the present case since that was a case where there was allegation that the partners who were aware about the transaction and the issuance of cheque. Therefore, the Apex Court came to the conclusion that the same is a subject matter of trial.

9. In the instant case, there is absolutely nothing in the complaint to show as to how and in what manner the petitioners (A3 to A6) are in-charge of the day-to-day affairs of the company. The averments made in the complaint does not satisfy the requirement under Section 141 of the Negotiable Instrument Act. In view of the same, the continuation of the proceedings as against the petitioners (A3 to A6) will amount to abuse of the process of law which requires interference by this Court.

10. In the light of the above discussion, the proceedings in STC.No.2500 of 2022 on the file of the learned Judicial Magistrate



1st Court, Tirupur is hereby quashed insofar as the petitioners are concerned.

It is left open to the Court below to proceed further with the complaint as against A1 and A2 and the proceedings in STC.No.2500 of 2022 shall be completed within a period of four months from the date of receipt of a copy of this order.

11. In the light of the above, this 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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