



WEB COPY



Crl.O.P.No.16144 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2024

CORAM

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

Crl.O.P.No.16144 of 2024

and

Crl.M.P.Nos.9844 & 9845 of 2024

Rajaraman

... Petitioner

Vs.

Sanagmeswaran

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C./ 528 BNSS, pleaded to call for the records of C.C.No.195 of 2021 pending on the file of the learned Judicial Magistrate No.II, Erode and quash the same.

For Petitioner : Mr.K.Sharath Chandran

ORDER

A private complaint under Section 200 of Cr.P.C been taken cognizance by Chief Judicial Magistrate, Erode, in which the petitioner herein been arrayed as 6th accused. According to the complaint, the petitioner/A6 herein in collusion with A1 to A5 had misrepresented the complainant and obtained original documents from the complainant in



CrI.O.P.No.16144 of 2024

connection with goods sold to a consignee at Chile. Without collecting the sale proceeds from the consignee, the goods were delivered and thereby, a monetary loss of \$167895.85 US dollars been caused and further, the petitioner/A6 herein, who has collected the original documents from the complainant had failed to return it.

2. The Learned Counsel appearing for the petitioner submitted that the petitioner herein, who is arrayed as A6 in the complaint is the Senior Manager of City Union Bank acted as a Remitting Banker to send the documents to the Collecting Bank designated by the complainant and on receipt of the payments from the Collecting Bank, same should be transferred to the complainant. Whereas, due to the conduct of the complainant himself who had made an endorsement that Freight payment overdue, the goods at Arica Port, Chile was delivered to the consignee without receiving the payment. In any event, at the delivery point, it is the Collecting Bank responsibility to ensure the payment and the said Collecting Bank was designated by the Complainant himself and it was not the choice of the petitioner's bank which only acted as a Remitting Banker.



CrI.O.P.No.16144 of 2024

3. Perusal of the record reveals that for the same grievance, the respondent has given a complaint before the Banking Ombudsman against City Union Bank and the same was rejected as devoid of merits as early as 02.01.2009. The respondent has taken up the matter to the Consumer Forum and his complaint before the State Consumer Dispute Redressal Commission dismissed on 25.06.2012. The first appeal before the National Consumer Forum in F.A.No.419 of 2015 also dismissed. Despite that, another complaint before the Consumer Forum was instituted in C.C.No.35 of 2013, that came to be dismissed on 31.08.2023. All these complaints with same cause of action was against City Union Bank and others and not against this petitioner. However, private complaint before the Judicial Magistrate No.II, Erode on 25.07.2017 after exhausting the relief through other forum and failed, suddenly given life to it and taken cognizance in C.C.No.195 of 2021.

4. The case of the petitioner is that the State Consumer Dispute Redressal Commission in C.C.No.35 of 2013 has categorically held that City Union Bank have no role to play on delivery of cargo or in handing over the documents to the consignee. In that complaint, the respondent



CrI.O.P.No.16144 of 2024

not whispered anything about the petitioner, who was the Senior Manager of City Union Bank at the relevant point of time.

5. The learned counsel appearing for the petitioner further submits that even according to this belated complaint, conspiracy was only between A1 to A5 and not against this petitioner, who is arrayed as A6. The clause in the bill of lading clearly indicates that delivery of goods to the customers or the present agent who is charged by law with the duty to receive, without presentation of bill of lading shall be deemed to be rightful. While so, when there is no overt act of commission of crime whispered in the complaint as against this petitioner, the complaint is liable to be quashed.

6. *Prima facie* examination of the documents found that this petitioner been wrongly arrayed as an accused in the complaint, granted stay of proceedings for a period of eight weeks and caused notice to the defacto complainant. The defacto complainant despite receipt of the notice has not appeared in person or through his counsel. His name is printed in the cause list, but there is no representation on his behalf.



CrI.O.P.No.16144 of 2024

7. The grievance of the petitioner's that the complaint first of all does not disclose any meeting of mind with the other accused. He as a Senior Manager of the bank acted as per the clause found in the bill of lading and handedover the consignment. The earlier round of litigation has totally exonerated City Union Bank, in which, the petitioner was serving as a Senior Manager. While so, the petitioner by his name now been sought to be prosecuted in the complaint in spite of categorical finding by the Consumer Forum and other Court as well as Hon'ble Supreme Court which has dismissed, the SLP confirming the dismissal of the complaint by the respondent herein before the State Consumer Forum as well as National Consumer Forum.

8. In the said circumstances, this Criminal Original Petition is allowed. Case against this petitioner in C.C.No.195 of 2021 stands quashed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

05.09.2024

Index : Yes/No

Neutral Citation : Yes/No

rpl



CrI.O.P.No.16144 of 2024

Dr.G.JAYACHANDRAN,J.

rpl

To

The Judicial Magistrate No.II, Erode

CrI.O.P.No.16144 of 2024

05.09.2024