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CrI.O.P.Nos.17895 of 2023 etc

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :24.01.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.Nos.17895, 6031 & 6044 of 2023

and

CrI.M.P.Nos.3802, 11796, 11797, 3799, 3800 & 3803 of 2023

Hiroo Hotchand Advani

... Petitioner/3rd Accused

Vs.

Integrated Finance Company Limited,
Represented by its Junior Executive &
Authorised Agent Sri.S.Sivagnanam
S/o.Late Mr.V.M.Subbiah,
("VAIRAMS") No.112, Sir Thyagaraya Road,
Thyagaraya Nagar, Chennai – 600 017.

... Respondent

Common Prayer : These Criminal Original Petitions are filed under Section 482 of Cr.P.C. to call for all the records pertaining to the proceedings of the case pending in C.C.Nos.1231, 1233 of 2016 and 1234 on the files of the learned Metropolitan Magistrate Fast Track Court-IV Magistrate, learned Metropolitan Magistrate VII, George Town, Chennai and quash the same in the respect of the petitioner/accused No.3.

For Petitioner : Mr.S.R.Raghunathan for



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Mr.B.Arvind Srevatsa in all Crl., O.Ps.

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COMMON ORDER

These petitions have been filed to quash the proceedings pending in C.C.Nos.1231, 1233 of 2016 and 1234 of 2016 on the file of the learned Metropolitan Magistrate Fast Track Court-IV Magistrate, and learned Metropolitan Magistrate VII, George Town, Chennai.

2. The respondent has filed three private complaints against the partnership firm and its partners for offence under Section 138 of the Negotiable Instruments Act (in short 'NI Act'). The petitioner has been arrayed as A3 in the present case.

3. Heard Mr.S.R.Raghunathan learned counsel for Mr.B.Arvind Srevatsa, learned counsel appearing for the petitioner and Mr.K.P.Ananthakrishna, learned counsel appearing for the respondent.

4. The main ground that was urged by the learned counsel appearing



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for the petitioner is that there are absolutely no averments in the complaints filed against the petitioner (A3) in order to satisfy the requirements under Section 141 of the NI Act and that the petitioner is not even a signatory of the cheque and A1 partnership firm is a family run concern in which the petitioner was more in the nature of a sleeping partner.

5.It was further contended that the petitioner is a Senior Advocate practising in the Bombay High Court and Supreme Court and therefore, he could not have taken active participation in the business of A1 partnership firm.

6. Per contra, the learned counsel appearing for the respondent by placing reliance upon the judgment of the Apex Court in the case of ***S.P.Mani and Mohan Dairy vs. Dr.Snehalatha Elangovan*** reported in ***(2023) 10 SCC 685***, submitted that there are necessary averments made in the complaint and hence, the petitioner will have to necessarily make out his defence only by facing the trial before the Court below.



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

8. There is no dispute with regard to the fact that the petitioner is not the signatory of the cheque. It is A2 who had signed the cheque on behalf of the partnership firm (A1). The averments as against the petitioner is found in paragraph No.2 and paragraph No.6 in each complaint. In paragraph No.2, it has been stated that the petitioner is an active partner involved in the day to day affairs of the partnership firm. Similarly in paragraph No.6, it is reiterated that the petitioner is involved in the day to day affairs of the business.

9. In the judgment that was relied upon by the learned counsel appearing for the respondent in the case of ***S.P.Mani and Mohan Dairy*** referred supra, it will be more appropriate to extract the relevant portions in the judgment, which reads as follows:-

57. When in view of the basic averment process is issued the complaint must proceed against the Directors or partners as the case may be. But, if any Director or Partner wants the process to be quashed



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by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he is really not concerned with the issuance of the cheque, he must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his contention. He must make out a case that making him stand the trial would be an abuse of process of Court. He cannot get the complaint quashed merely on the ground that apart from the basic averment no particulars are given in the complaint about his role, because ordinarily the basic averment would be sufficient to send him to trial and it could be argued that his further role could be brought out in the trial. Quashing of a complaint is a serious matter. Complaint cannot be quashed for the asking. For quashing of a complaint, it must be shown that no offence is made out at all against the Director or partner.

58. Our final conclusions may be summarised as under:

58.1.....

58.2.....

58.3.....

58.4. If any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he/she is really not concerned with the issuance of the cheque, he/she must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his/her contention. He/she must make out a case that making him/her stand the trial would be an abuse of process of Court.



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10. In the above judgment, the Apex Court has made it clear that it is enough if the complaint consist of basic averments as against the accused person. If the accused person who is the partner or Director, as the case may be, wants to quash the proceedings, he/she must furnish some sterling incontrovertible materials to substantiate that he/she was not involved in the day to day affairs of the company/firm and that the trial would be an abuse of process of law

11. It will also be relevant to take note of the judgment of the Apex Court in the case of *Siby Thomas vs. Somany Ceramics Limited* reported in *(2024) 1 SCC 348*. In this judgment, the Apex Court had taken note of both *Gunmala Sales Pvt., Limited vs. Anu Mehta & Ors.*, reported in *(2015) 1 SCC 103* and *S.P. Mani and Mohan Dairy* case referred supra.

12. In the light of the above judgments, if this Court carefully goes through the complaint, it is seen that basic averments have been made against the petitioner as if he is involved in the day to day affairs of the



firm.

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13.The learned counsel appearing for the petitioner submitted that the petitioner could not have involved himself in the day to day affairs of the firm, since the petitioner is a Senior practising Advocate at Bombay High Court and the Supreme Court. To substantiate the same, certain reported judgments in which the name of the petitioner has been mentioned was brought to the notice of this Court. The first judgment that was placed reliance was the judgment in ***Food Corporation of India vs. Litak Shipping Company Ltd.***, reported in ***1996 1KLJ 101***. The latest judgment that was brought to the notice of this Court is the judgment in ***Cox & Kings Ltd., vs. SAP India Pvt., Ltd., & Anr*** reported in ***(2022) 8 SCC 1***. In this judgment, the petitioner had played a major role in arguing the case before the Apex Court.

14.In the considered view of this Court, the above materials that have been placed before this Court are sterling incontrovertible materials. The petitioner who is such an active practitioner can never involve himself in the day to day affairs of the partnership firm (A1). Therefore, the bald



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averments that have been made in the complaints against the petitioner is not a ground to make the petitioner to undergo the trial and establish his defence. Infact, the continuation of the proceedings against the petitioner would be an abuse of process of law. Therefore, this Court has absolutely no hesitation to interfere with the proceedings insofar as the petitioner is concerned.

15.In the light of the above discussion, the proceedings in C.C.Nos.1231, 1233 of 2016 and 1234 on the file of the learned Metropolitan Magistrate Fast Track Court-IV Magistrate and learned Metropolitan Magistrate VII, George Town, Chennai are quashed in so far as the petitioner is concerned.

16.In the result, CrI.O.P.Nos.17895, 6031 & 6044 of 2023 are allowed and there shall be a direction to the Court below to complete the proceedings in C.C.Nos.1231, 1233 of 2016 and 1234 of 2016 on the file of the learned Metropolitan Magistrate Fast Track Court-IV Magistrate and learned Metropolitan Magistrate VII, George Town, Chennai, within a



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period of six (6) months from the date of receipt of a copy of this order.

Consequently, connected miscellaneous petitions are closed.

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Index :Yes

Internet:Yes

Speaking Order/Non-speaking Order

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To
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- 1.learned Metropolitan Magistrate Fast Track Court-IV Magistrate, George Town, Chennai.
- 2.learned Metropolitan Magistrate VII, George Town, Chennai.



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