



WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRL.OP No. 22876 of 2022

1 PRADEEP BHARADWAJ

M/S.VENKATESWARA SPONGE AND POWER P LTD
(UNDER LIQUIDATION) 18/10 DOVER LANE
KOLKATTA 700029.

...Petitioner

Vs.

1 M/S.COASTAL ENERGY PVT LTD
(UNDER LIQUIDATION) BUHARI TOWERS 5TH FLOOR
NO.4 MOORS ROAD CHENNAI 600006.

...Respondent

PRAYER : This petition has been filed under Section 482 of Cr.P.C , to call for the records pertaining to the case in CC.No.38 of 2013 on the file of the learned Metropolitan Magistrate (FTC-1) Egmore at Allikulam quash the same by allowing this quash petition.

For Petitioner : Mr.R.Swarnavel
For Respondent : Service awaited.



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ORDER

The petitioner herein filed this petition to call for the records pertaining to the case in CC.No.38 of 2013 on the file of the learned Metropolitan Magistrate (FTC-1) Egmore at Allikulam and quash the same by allowing this quash petition.

2. The respondent company/Coastaly Energy Private Limited, lodged a complaint against the first accused namely Shri Vankateswara Sponge & Power private limited, represented by its manager, wherein the petitioner was one of the director who was arrayed as fourth accused. The specific allegations against the petitioners and his company is that the first accused purchased Coal for a value of Rs.3,22,64,328/- from the complainant on various dates and the first accused paid partial payments in respect of the said transaction towards discharge of the said dues, by issuing cheque bearing No. 543679 for a sum of Rs.1,50,00,000/- and the same was presented before the Corporation Bank and it was returned unpaid by the first accused with an endorsement "Funds insufficient". After sending notice to the accused persons the respondent lodged a complaint under Section 138



of N.I. Act, and the same was taken on file in C.C No. 38 of 2013.

Challenging the same the petitioner/fourth accused filed this petition.

3. The learned counsel for the petitioners submits that the first accused company was closed down its operations much before the complaint dated 24.06.2011 due to various difficulties. Further, the petitioner was never part of the administration at the relevant point of time and also not the part of the management which carried out day to day affairs of the first accused company. It was not the case of the respondent too that the petitioner directly involved in the day to day affairs and issued the alleged cheque to them. Hence, the complaint is against the ratio laid down by the Supreme Court in the case of Ramraj Singh Vs. State of Madhya Pradesh (2009) 6 SCC 729 that to launch a prosecution against the alleged directors there must be a specific allegation in the complaint as to the part played by him in the transaction. Hence, he prays to quash the C.C No. 38 of 2013.

4. On perusal of the records, it reveals that M/s. Coastal Energy Private Limited, lodged a complaint in the year 2011, in spite of the notice sent to complainant, the complainant/respondent is not appeared before this



court which probablise that the respondent company was abandoned the proceedings probably due to the closure of the company. On considering the submissions on the of the petitioner, the respondent company is under liquidation and became defunct by overdue of liquidation to that effect the petitioner counsel produced the liquidation order of the complainant company dated 17.06.2014 in IBA/624/2019 under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy(Application to adjudicating Authority) Rules, 2016. Therefore, on perusal of the records, it reveals that both the companies are under liquidation and also there is no representation on the side of the complainant company shows that the company is not inclined to proceed the case further.

5. Furthermore, on perusal of complaint, it reveals that the petitioner was not involved in the day to day affairs of the company. Furthermore, the alleged cheque was issued by the second accused on behalf of the first accused. Therefore, it is not able to find out who is the signatory of the alleged cheque due to the non representation on the side of the complainant company. But as per the records produced by the petitioner, it shows that the both the company is under the liquidation proceedings except averments against this petitioner, there is no specific overtact against the petitioner.



Hence, this Court is inclined to quash the C.C No. 38 of 2013 pending on the file of the Metropolitan magistrate (FTC-1) Egmore, Allikulam.

6. In the result, this petition is allowed. No Costs. Consequentially, connected miscellaneous petition is closed.

20.03.2024

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To

The Public Prosecutor, High Court, Madras.



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T.V.THAMILSELVI, J.

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