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CrI.O.P.No.18444 of 2023

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.No.18444 of 2023

and

CrI.M.P.Nos.12278 &12279 of 2023

Mr.T.Varadharajan

... Petitioner/ 1st Accused

Vs.

M/s.Energy Point

Rep., by its Power agent

Mr.S.Murugan

S/o. Solaimalai,

Indian Oil Petrol Bunk Outlet,

S.No.1278/3, Kelamangalam Road,

Aggondapalli, Hosur,

Tamil Nadu – 635 110.

... Respondent

Prayer : These Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records and quash the criminal proceedings in S.T.C.No.93 of 2021 on the file of Judicial Magistrate, Fast Track Court at Hosur and to pass any other suitable order.

For Petitioner : Mr.M.P.Saravanan



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For Respondent : Mr.K.Krishna

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ORDER

This petition has been filed to quash the proceedings in S.T.C.No.93 of 2021 on the file of Judicial Magistrate, Fast Track Court at Hosur.

2. Heard Mr.M.P.Saravanan learned counsel appearing for the petitioner and Mr.K.Krishna, learned counsel appearing for the respondent.

3. The respondent has filed a private complaint against three accused persons for offence under Section 138 of the Negotiable Instruments Act (in short 'N.I.Act'). The petitioner has been arrayed as A1 in the complaint.

4. The main ground that was urged by the learned counsel appearing for the petitioner is that the cheque was issued by the second accused in his individual capacity and therefore, the petitioner who is neither the signatory of the cheque nor the drawer of the cheque cannot be made as an accused.

5. The learned counsel appearing for the respondent submitted that



the accused person made the respondent believe that they are partnership firm and the respondent had also supplied diesel and the amount was not settled. The learned counsel therefore submitted that the capacity of the petitioner in the firm can be established only in the course of trial.

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

7.It is seen from the cheque that is subject matter of the private complaint that it has been issued by A2 in his individual capacity. There is absolutely no indication that the cheque was issued on behalf of any firm or company.

8. In view of the same, the petitioner who has been arrayed as A1 is not in the capacity of drawer of the cheque and therefore, the basic ingredient itself has not been established against the petitioner. In view of the same, the continuation of the criminal proceedings as against the petitioner will amount to abuse of process of law, which requires the interference of this Court.



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9. In the light of the above discussion, the proceedings as against the petitioner (A1) is hereby quashed and there shall be a direction to the Court below to proceed with the complaint in S.T.C.No.93 of 2021 on the file of Judicial Magistrate, Fast Track Court at Hosur as against the other accused person and to complete the proceedings within a period of three (3) months from the date of receipt of a copy of this order.

10.The Criminal Original Petition is allowed with the above directions.
Consequently, connected miscellaneous petition is closed.

24.01.2024

Index :Yes/No
Internet:Yes
Speaking Order/Non-speaking Order
pbn



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Judicial Magistrate, Fast Track Court at Hosur



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N.ANAND VENKATESH,J.

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