



Crl.O.P.No.19130 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.19130 of 2023

And

Crl.M.P.Nos.12826 and 12825 of 2023

K.P.Natarajan

... Petitioner

Vs.

M/s.State Bank of India
(Commercial Branch)
having its office at
No.68, Cherry Road,
Hasthampatty,
Salem – 636 007.
Rep. by its Deputy Manager,
Mr.S.Pradeep Kumar

... Respondent

Prayer:

Petition filed under Section 482 of Cr.P.C., seeking to call for the records and to quash the impugned complaint in S.T.C.No.1513 of 2023 pending trial on the file of the learned Judicial Magistrate No.III, Salem for the alleged offence under Section 138 of Negotiable Instruments Act, 1881 in so far as the petitioner.

For Petitioner : Mr.V.Karthic
Senior Counsel
for M/s.N.Damodaran

For Respondent : Mr.Nithyaesh Nataraj



Crl.O.P.No.19130 of 2023

WEB COPY

ORDER

The criminal original petition has been filed by A2 to quash the proceedings pending in S.T.C.No.1513 of 2023, on the file of the learned Judicial Magistrate No.III, Salem.

2.Heard the learned Senior Counsel for the petitioner and the learned counsel for the respondent.

3.The respondent has filed a private complaint against the petitioner, the Company and also one of the Director of the Company who also happens to be the son of the petitioner, for offence under Section 138 of the Negotiable Instruments Act. The case of the respondent is that the company availed cash credit facilities from the Bank and towards repayment/ discharge of their liability, A3 who is the Director of the Company issued the cheque for a sum of Rs.3,76,000/- When this cheque was presented, it was dishonoured with an endorsement 'funds insufficient'. Thereafter notices were exchanged and the private complaint came to be filed before the Court below.

4.The main issue that was urged by the learned Senior Counsel



Crl.O.P.No.19130 of 2023

WEB COPY

for the petitioner is that A3 is the signatory of the cheque and the cheque was given in his individual capacity and that the petitioner is not the drawer of the cheque and therefore the complaint against the petitioner for offence under Section 138 of the Negotiable Instruments Act is not maintainable.

5.In reply to the above submission, the learned counsel for the respondent submitted that the loan was taken by the Company and the petitioner and his son are the Directors of the Company and that towards partial discharge of the existing liability, the cheque was issued by A3 in his capacity as a Director. That apart, sufficient averments were made in the complaint explaining the part played by the petitioner. The learned counsel submitted that similar issue was raised in Crl.O.P.No.17357 of 2018 and this Court by order dated 24.01.2022 dismissed the quash petition on the ground that it is a factual dispute which can be decided only by the Trial Court.

6.From the reading of the complaint, it is seen that the liability is traced towards the liability of the Company which has been added as A1. However, the cheque has been issued by A3 in his individual



CrI.O.P.No.19130 of 2023

WEB COPY

capacity. Even though the respondent is attempting to project the case as if A3 had issued the cheque in his capacity as the Director of the Company, the same is not reflected in the cheque in question. The cheque has been issued only by A3 and probably it is towards the discharge of the existing liability of the Company.

7.In view of the above, the petitioner (A2) not being the signatory of the cheque and not being the drawer of the cheque, cannot be made to face the prosecution for offence under Section 138 of the Negotiable Instruments Act. In view of the same, the continuation of the proceedings against the petitioner (A2) will clearly amount to abuse of process of Court which requires interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

8.In the result, the proceedings in S.T.C.No.1513 of 2023 on the file of the learned Judicial Magistrate No.III, Salem, is quashed in so far as the petitioner is concerned. There shall be a direction to the Court below to proceed further with the case in S.T.C.No.1513 of 2023 and complete the proceedings, within a period of three months from the date of receipt of copy of this order.



Crl.O.P.No.19130 of 2023

WEB COPY

9.This criminal original petition is allowed with the above directions. Consequently, the connected miscellaneous petitions are closed.

06.02.2024

pri

Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

1.The Judicial Magistrate No.III,
Salem.

2.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.



WEB COPY



Crl.O.P.No.19130 of 2023

N.ANAND VENKATESH,J.
pri

Crl.O.P.No.19130 of 2023
And
Crl.M.P.Nos.12826 and
12825 of 2023

06.02.2024