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CRL O.P. No.23534 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.09.2024

CORAM

The Hon'ble Mr.Justice P.DHANABAL

CRL OP.No.23534 of 2022

and

CrI. M.P. No.14992 of 2022

1. K. Vijayakumar S/o. Krishnakumar
2. V. Priya W/o. K. Vijayakumar ... Petitioners / Accused
Vs.

M/s. Anwar Trading and
Contracting Company,
represented by its assignee
T. Senthil Kumar. ... Respondent / Complainant

PRAYER :-This Criminal Original Petition has been filed under Section
482 of Criminal Procedure Code to call for the records in respect of
Criminal case in C.C. No.31 of 2021 on the file of the Judicial Magistrate
Court No.I, Chidambaram and to quash the same.

For petitioners : Mr. U. Venkatesan

For Respondent : Mr. S. T. Raja

ORDER

This Criminal original petition has been filed to quash the



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proceedings in C.C. No.31 of 2021 on the file of the Judicial Magistrate Court No.I, Chidambaram.

2. According to the petitioners, these petitioners have been arrayed as accused in the said case based on the complaint given by the respondent. The respondent herein has filed a cheque complaint against these petitioners alleging that the 1st accused had approached the complainant in the month of November 2015 for business opportunity in Qatar, since the complainant was working with M/s. Mars Cargo Services. The complainant also facilitated for a sponsor namely Mohamad Al Qubaisi. Thereafter, at request of A1, the complainant had arranged business Visa for all the accused and all the three landed in Qatar on 17.12.2015. The 1st accused has also agreed to pay the amount spent by the sponsor company totaling to 1,91,770/- QAR. In the month of April 2017, the 1st accused introduced the complainant's assignee to the said company namely M/s. Al mass Commercial and contracting Company and subsequently, he came to know that the 1st accused had already collected cash to the tune of 163,709 QAR, but the said work was abandoned in half way and thereby, the complainant was forced to



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complete the said contract on behalf of the 1st accused. Thereafter, in December 2017, the 1st accused was arrested by the Qatar Police due to his various criminal activities and at that time, the 2nd accused requested the complainant to settle the dues of the creditors to release the 1st accused from the prison and to send him back to India. On the assurance that the 2nd accused will endeavour to settle the outstanding dues payable to the complainant M/s. Anwar Trading and Contracting Company represented by the complainant. Thereafter, the 2nd accused on the return of the 1st accused to India, signed and issued a cheque of Axis Bank, Shanthi Colony, Chennai in favour of the complainant. Thereafter, the accused failed to settle the said amount. Thereafter, a complaint was given by the complainant in Anna Nagar Police Station dated 06.10.2018 and the 2nd accused also had undertaken to settle the amount with reduced sum. Thereafter, he did not pay the amount. The accused have to pay a sum of Rs.43 lakhs. When the complainant presented the cheque dated 23.03.2019 for the liability of the 1st accused as a guarantor, the cheque was returned as 'account closed'. Thereafter, he issued a notice dated 16.04.2019. The said notice was returned as



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unclaimed and thereafter, the accused have not paid the amount and not issued reply and failed to pay amount and hence the complaint.

3. The learned counsel appearing for the petitioners would contend that the T. Senthil Kumar and one Srikanth, had acquaintance with the 1st petitioner, hatched criminal conspiracy as against the petitioners with ulterior intention to extort huge sum of money to the tune of Rs.43 lakhs and Rs.8,90,000/- from the petitioners and to achieve the said goal, the complainant Senthil Kumar filed this complaint and the said Srikanth has also filed a case against Priya in C.C. No.5901 of 2019 before the Fast Track Court No.II, Egmore @ Allikulam, Chennai. The said Senthilkumar had collected blank cheque leaves given by the 2nd petitioner to the said Srikanth and filled up the same for Rs.43 lakhs and they both have engaged same counsel at the time of sending legal notice. The said Senthil Kumar used the said foreign complaint as complainant with a view to escape from future consequence of malicious prosecution complaint by the petitioners and wantonly included the 1st petitioner as 1st accused in the said calendar case. Therefore, the complainant M/s. Anwar Trading company has no locus standi to file the C.C. No.31 of



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2021 against the petitioners. The complainant is neither drawee nor holder in due course of the negotiable instrument. The 1st petitioner is neither drawee nor signatory to the cheque which is subject matter of the cheque. The learned Magistrate has failed to consider the above said aspects and has erroneously taken cognizance and issued summons to the petitioners. Therefore, the pending proceedings in C.C. No.31 of 2021 are liable to be quashed.

4. In support of his contention, the learned counsel appearing for the petitioners has relied upon the following judgments:

4(i) *Milind Shripad Chandurkar vs. Kalim M. Khan and another reported in AIR 2011 Supreme Court 1588.*

4(ii) *Aravind Singh Rajpoot vs.M/s. Intersight Holidays Pvt. Ltd., and others in Crl. M.C. No.984 of 2018 on the file of High Court of Kerala.*

5. No representation for the respondent and already several opportunities were given, but none appeared. Already notice served to him and he also appeared through counsel. But, when the case is posted for hearing, no representation on his side and already ample chances



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were given, but none appeared. Hence this Court heard the petitioners' side, perused the records and passed the order.

6. In this case, the respondent has filed a cheque complaint case against the petitioners stating that the 2nd petitioner issued a cheque for the liabilities of the 1st petitioner. But there was no document to show the transaction between the parties. Moreover, as per the complaint, the name of the complainant is M/s. Anwar Trading Company represented by its assignee T. Senthil Kumar, but cheque was issued in the name of T. Senthil Kumar and not in the name of the company. Moreover, there is no reference in the complaint as to how the 1st petitioner is liable to pay the amount.

7. Admittedly, in the cheque, the 2nd petitioner only signed. According to the petitioners, the cheques were misused. The cheque was not issued in the name of the complainant company, but the complaint has been lodged by M/s. Anwar Trading Company. The cheque was issued in the individual name of Senthil Kumar and notice also sent by him on his individual capacity, but the present complaint is in the name of the company. Therefore, the complaint itself is not maintainable. The



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complainant is neither drawee nor holder in due course of the negotiable instrument. Therefore, the complaint against these petitioners is not maintainable.

7.1. In this context, the learned counsel appearing for the petitioners has relied upon the judgment in ***Milind Shripad Chandurkar vs. Kalim M. Khan and another reported in AIR 2011 Supreme Court 1588***. On careful perusal of the above said judgments, it is clear that *the law stands crystallised to the effect that a person can maintain a complaint provided he is either a "payee" or "holder in due course" of the cheque*. But in the case on hand, the complainant M/s. Anwar Trading Company is neither a payee nor a holder in due course. The cheque was issued in the name of Senthil Kumar, but the Senthil Kumar has not filed any complaint. Therefore, the complaint is not maintainable.

8. Further, the petitioners have also produced the judgment of ***Aravind Singh Rajpoot vs.M/s. Intersight Holidays Pvt. Ltd., and others in Crl. M.C. No.984 of 2018 on the file of High Court of Kerala, wherein, the Hon'ble High Court of Kerala*** has clearly held that the



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cheques were issued in the name of 'Intersight Tours and Travels Pvt. Ltd., but the Director of Intersight Tours and Travels Pvt. Ltd., issued the notice and complaint was also filed by him. Therefore, the complainant has no locus standi to prosecute the accused and quashed the complaint. In this case on hand also, the cheque was issued in the name of Senthil Kumar, but the complaint was filed by M/s. Anwar Trading and Contracting Company Limited and therefore, the complaint as against the petitioners is liable to be quashed.

9. In view of the above discussions, this Court is of the opinion that the pending proceedings in C.C. No.31 of 2021 are abuse of process of law and are liable to be quashed.

10. In the result, the Criminal Original petition is allowed and the proceedings in C.C. No.31 of 2021 on the file of the Judicial Magistrate Court No.I, Chidambaram are quashed. No costs. Consequently, the connected miscellaneous petition is closed.

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index: Yes/No

Internet: Yes/No

Speaking/Non Speaking order

mjs

To

1. The Judicial Magistrate Court No.I, Chidambaram
2. The Public Prosecutor, High Court, Madras.

P.DHANABAL,J

mjs

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