



WEB COPY



CRL O.P. No.27456 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.10.2024

CORAM

The Hon`ble Mr. Justice P.DHANABAL

Crl. O.P. No.27456 of 2022
and Crl. M.P. Nos.16895 and 16898 of 2022

Girdharilal Lath ... Petitioner / Accused No.4
vs.

1. Kotak Mahindra Bank Limited,
represented by its Chief Manager Ragothaman

2. Yashovardhan Ashokvardhan Birla
Director - M/s. Shearson Investments &
Trading Company Private Limited.

3. Shearson Investments & Trading Company Private Limited
represented by its authorized signatories
Mr. Nikhil Agrawal and Girdharilal Lath

4. Nikhil Agrawal
Director / authorized signatory
M/s. Shearson Investments & Trading
Company Private Limited

5. Arun Kumar Singhi,
Director M/s. Shearson Investments & Trading
Company Private Limited.

6. Ashish Ramesh Mahendrakar Respondents

PRAYER: The Criminal Original petition is filed under Section 482 of



CRL O.P. No.27456 of 2022

Criminal Procedure Code to call for records pertaining to the proceedings in C.C. No.1955 of 2017 on the file of the Fast Track Court-IV, George Town, Chennai and to quash the same..

For petitioners: Mr. R. Sathish Kumar

For Respondents : Mr. H. Karthik Seshadri [for R1]

Notice dispensed with for R2 to R6 vide order dated 10.11.2022.

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C. No.1955 of 2017 on the file of the Fast Track Court-IV, George Town, Chennai.

2. According to the petitioner, he is the 4th accused facing criminal prosecution for alleged offences under Sections 138, 141 and 142 of the Negotiable Instruments Act read with 200 of the Code of Criminal Procedure in C.C. No.1955 of 2017 on the file of the Fast Track Court No.IV, George Town, Chennai. The other accused were arrayed as accused in their capacity as Directors of the company, M/s. Shearson Investments & Trading Company Private Limited. The complaint was

2/10



CRL O.P. No.27456 of 2022

filed against the accused in this case for the allged dishonour of the cheque drawn at Union Bank of India, Veeer Nariman Road, Mumbai issued by the said Shearson Investments & Trading Company Private Limited for a sum of Rs.24,34,52,020.34. When the cheque was presented for collection through Kotak Mahindra Bank, Chennai, the same was returned for the reason 'insufficient funds'. Hence the complaint has been preferred by the complainant. As per the complaint, the accused herein have approached the respondent for a Home Equity Loan for a sum of Rs.19 crores. The petitioner / 4th accused in the complaint signed the cheque in his capacity as the authorized signatory of the 2nd accused company along with the 3rd accused. The petitioner was the Director of the 2nd accused company when the loan transaction was entered into 19th March 2012. The said cheques were signed by him and the 3rd accused during the loan transaction in the year 2012, in their capacity as Directors of Shearson Investments & Trading Company Private Limited and were given to the respondent / complainant as a security towards the said loan in the name of the said company. Due to his health condition, since the year 2013, he was taking treatment for



CRL O.P. No.27456 of 2022

cancer and heart ailments. Thereby, he resigned his Directorship from the 2nd accused company and ceased to act in any capacity for the said accused company. The resignation was communicated by the petitioner to the 2nd accused company and the same is also recorded with the Registrar of Companies, Mumbai by filing the necessary form DIR-12 as per Section 168 of the Companies Act. The copy of the communication by the petitioner and the Board resolution dated 23.05.2014 by the 2nd accused company have been filed before the Registrar of Companies. Therefore, as on 23.05.2014, the petitioner had ceased to be a Director of the 2nd accused company. The cause of action for the present complaint arose only on 02.05.2017, when the complainant presented the said cheque, the petitioner is not a Director of the company. Therefore, no offence is made out as against this petitioner. Therefore, the proceedings as against the petitioner are liable to be quashed.

3. No counter was filed by the respondent.



CRL O.P. No.27456 of 2022

4. The learned counsel appearing for the petitioner would contend that the petitioner was the Director of the 2nd accused company and he resigned his Directorship on 23.05.2014 and the same was informed to the 2nd accused company and Form DIR-12 was also submitted to the Registrar of Companies as per Section 168 of the Companies Act. The alleged cheque was given for security by the petitioner, when he was the Director of the 2nd accused company on 19.03.2012. Thereafter, the cheque was presented on 02.05.2017 and the same was dishonoured. While so, on the date of presentation of the cheque, this petitioner is no way connected with the company as he resigned his job as early as on 23.05.2014. Therefore, there is no offence made out as against this petitioner and the cheque was also a time-barred cheque. Therefore, the proceedings as against the petitioner are liable to be quashed.

5. The learned counsel appearing for the respondents would contend that the petitioner is one of the Directors of the company and he also signed in the cheque along with the 3rd respondent and the respondents strongly denied the resignation of the petitioner as Director



CRL O.P. No.27456 of 2022

from the 2nd accused company and the documents filed along with this petition is disputed by the respondents. Therefore, it is to be proved in the manner known to law. Even as per the documents, he only filed his resignation and whether it was accepted or not has to be tested through trial and merely because the petitioner submitted his resignation without acceptance from the Registrar of Companies, it cannot be decided at this stage and therefore, it needs elaborate trial and hence the petition is liable to be dismissed.

6. Heard both sides and perused all the materials available on record.

7. In this case, there is no dispute that the cheque was issued by the petitioner and another on behalf of the 2nd accused company and the cheque was presented for collection on 02.05.2017 and the same was returned as 'insufficient funds', thereby, the complaint was lodged. According to the petitioner, the cheque was issued on 19.03.2012 for the



CRL O.P. No.27456 of 2022

loan obtained by the company namely M/s. Shearson Investments & Trading Company Private Limited. According to the petitioner, he resigned his Directorship on 23.05.2014 and the same was also informed to the 2nd accused company and the Registrar of Companies by submitting Form DIR-12 under Section 168 of the Companies Act. The respondents have stoutly denied the above said resignation and the Form submitted by the petitioner. The petitioner has also produced the copy of the form DIR-12, but the said document is stoutly denied by the respondent / complainant and therefore, the petitioner has to prove his resignation from the Directorship through sufficient evidence. This Court, while exercising Section 482 of the Code of Criminal Procedure, cannot conduct mini trial and when the facts are disputed, it needs elaborate trial and the resignation of Directorship has to be decided by the trial Court based on records.

8. The petitioner is at liberty to file the documents before the trial Court to prove the alleged resignation of Directorship from the accused company. Since the petitioner admitted the issuance of cheque and the

7/10



CRL O.P. No.27456 of 2022

cheque was also dishonoured, only the mere fact that the petitioner resigned his job that too without any proof, is not sufficient to quash the cheque complaint and the resignation of the petitioner from the Directorship has to be proved in the manner known to law by producing sufficient evidence. In order to prove the same, the petitioner has to adduce evidence by way of defence. Therefore, it needs elaborate trial and the petitioner has to appear before the Trial Court and he has to prove the resignation from the accused company. Therefore, as rightly contended by the respondents that the petitioner has to face the trial. The grounds raised by the petitioner before this Court are nothing but the defence to be taken before the trial Court. Therefore, the petitioner is at liberty to approach the trial Court to prove his case in the manner known to law.

9. In view of the above discussions, this Court is of the opinion that this petition has no merits and deserves to be dismissed.

10. Accordingly, the Criminal Original Petition is dismissed. No costs. The connected miscellaneous petitions are closed.

24.10.2024



CRL O.P. No.27456 of 2022

index: Yes/No
Internet: Yes/No
Speaking/Non Speaking order
mjs

P.DHANABAL,J

mjs

To

1. The Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai.
2. The Public Prosecutor, High Court, Madras.

CRL. O.P. No.27456 of 2022

24.10.2024



WEB COPY



CRL O.P. No.27456 of 2022