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CrI.O.P.No.20892 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.20892 of 2023

and

CrI.M.P.Nos.14320 & 14323 of 2023

1.V.Maheshwaran,
Trustee IMAI,
84 West Street, Nalla Karuppan Patti,
Sivalpatti, Theni District,
Tamil Nadu – 625 602.

2.T.Pandeeswaran,
Trustee, IMAI,
142, Vellalar Street, Vadugapatti,
Theni, Tamil Nadu – 625 603.

3.G.Nehru Murugan, (TNSTC),
Trustee IMAI, Post Office Street,
Vadugapatti, Theni,
Tamil Nadu – 625 603.

4.M.Vasumani,
Trustee, IMAI,
Vasu Medicals, Vadugapatti,
Theni, Tamil Nadu – 625 603.

.. Petitioners

Vs.

M/s.Samunnati Financial Intermediation
& Services Pvt Ltd.,
represented by its Consultant /
Power Agent M.Kannan,



Cr1.O.P.No.20892 of 2023

having office at
Baid Hi The Park, 8th Floor,
129-B, ECR Thiruvanmiyur,
Chennai – 600 041.

.. Respondent

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records pertaining to the impugned complaint in S.T.C.No.2924 of 2022 pending on the the file of the Fast Track Court V Metropolitan Magistrate, Saidapet, Chennai and quash the same in so far as the petitioners / accused No.5 to 8 are concerned as illegal, arbitrary, abuse of process of law and oppressive.

For petitioners : Mr.N.Easwaran

For Respondent : No appearance

ORDER

The Criminal Original Petition has been filed seeking to quash the proceedings in S.T.C.No.2924 of 2022 pending on the the file of the Fast Track Court V Metropolitan Magistrate, Saidapet, Chennai, in so far as the petitioners (accused No.5 to 8) are concerned.

2.The respondent has filed a complaint under Section 138 of the Negotiable Instruments Act against the Trust and other trustees on the ground that he entered into Memorandum of Understanding and signed a



Cr1.O.P.No.20892 of 2023

loan in favour of the Trust. The same was not repaid back and on repeated demands and requests, cheque was issued by the Trust which was signed by the 2nd accused. When the same was sent for collection, it was dishonored with an endorsement 'insufficient fund'. After service of the statutory notice, a private complaint was filed before the Court below.

3.Heard the learned counsel for the petitioner.

4.The respondent has been served with notice and the name has also been printed in the cause list. There is no appearance either in person or through counsel.

5.The petitioners have been arrayed as A5 to A8 in the complaint.

The only averment that has been made against the petitioners is extracted hereunder:

“6.It is submitted that accused 3 to 8 are trustees of 1st accused trust and were actively involved in day to day affairs of 1st accused and as such it would be appropriate in stating that they were the controlling mind and arm of 1st accused trust.



6. On carefully going through the complaint, it is seen that it is only

A2 & A3 who had participated effectively on behalf of the Trust (A1).

The only question is as to whether the petitioners must face the ordeal of trial only on the ground that they are also the Trustees of A1 Trust.

7. This Court in **Abraham Memorial Educational Trust, Nos.1 & 2, Basement, Cotton Complex, Residency Road, Bangalore – 560 025 and others Vs. C.Suresh Babu**, reported in **2012 (5) CTC 203** has held that a Trust is a juristic person liable for punishment for offences under Section 138 of the Negotiable Instruments Act. This Court held that it must be construed as a Company in terms of Section 141 of the Negotiable Instruments Act and hence, every trustee who is incharge and responsible for running day to day affairs of the Trust are liable to be prosecuted besides the Trust. This position was thereafter reiterated in **R.Vivekanandan Vs. Chandrakanthan**, reported in **2012 (2) MWN Criminal DCC 94**.

8. The allegations made against the petitioners (A5 to A8) which has been extracted supra is a mere reproduction of the language used under Section 141 of Negotiable Instruments Act.



Cr1.O.P.No.20892 of 2023

WEB COPY 9.The Hon'ble Apex Court in **Siby Thomas Vs. Somany**

Ceramics Limited, reported in **2024 (1) SCC 348** has held that whenever the Directors of the Company are added as an accused, it must be stated as to how and in what manner they are incharge and responsible for the conduct of the day to day affairs of the Company. Since, this concept is applied to a Trust also, there must be averments in the complaint with respect to other Trustees as to how and in what manner they were incharge and responsible for running the day to day affairs of the Trust. In the absence of the same, they cannot be made to face the criminal prosecution under Section 138 of the Negotiable Instruments Act.

10.In the light of the above discussion, this Court finds that the continuation of the criminal proceedings as against the petitioners (A5 to A8) for offences under Section 138 of the Negotiable Instruments Act will be an abuse of process of law and it requires the interference of this Court. As a consequence, the proceedings in S.T.C.No.2924 of 2022 pending on the the file of the Fast Track Court V Metropolitan Magistrate, Saidapet, Chennai is quashed in so far as the petitioners (A5



Cr1.O.P.No.20892 of 2023

to A8) are concerned.

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11.In the result, this Criminal Original Petition is allowed and there shall be a direction to proceed further with the case in so far as the other accused persons are concerned and complete the proceedings in S.T.C.No.2924 of 2022 pending on the the file of the Fast Track Court V Metropolitan Magistrate, Saidapet, Chennai, within a period of four (4) months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petitions are closed.

14.03.2024

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Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

To

1.The V Metropolitan Magistrate,
Fast Track Court,
Saidapet, Chennai

2.The Public Prosecutor,
Madras High Court, Chennai.

N.ANAND VENKATESH, J.



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Cr1.O.P.No.20892 of 2023

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Cr1.O.P.No.20892 of 2023

14.03.2024
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