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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:14.03.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P No.21578 of 2023
and
Crl.MP.Nos.14881 & 14882 of 2023

Mr.Avinash Sargoi

...Petitioners/Accused 3

.Vs.

Mr.Tarun Jain

.. Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to the STC No.4603 of 2022, pending on the file of the learned XXV Metropolitan Magistrate, Egmore and quash the same.

For Petitioners : Mr.K.P.Anantha Krishnan

For Respondent : Mr.Prakash Goklaney
Mr.S.Velu
Mr.S.Sivalinga Kesavan

ORDER

This petition has been filed seeking to quash the proceedings in STC No.4603

of 2022, pending on the file of the learned XXV Metropolitan Magistrate, Egmore.



2.The respondent has filed a complaint for offence under Section 138 of the Negotiable Instruments Act, 1881 against the partnership firm and its partners. The petitioner has been arrayed as A3 in the complaint.

3.The case of the respondent is that A1 Firm had borrowed a sum of Rs.10,00,000/- from the respondent. Out of this amount, Rs.4,35,000/- was due and payable. In order to discharge this liability, cheque was issued in favour of the respondent. When it was presented for encashment, it was returned with an endorsement 'stop payment'. After exchange of statutory notice, the complaint came to be filed before the Court below.

4.Heard the learned counsel for the petitioners and the learned counsel for the respondent.

5.The main ground that was raised by the learned counsel for the petitioner is that A2 and A4 have signed the cheques and the petitioner has been added as a partner without making any allegations in the complaint as to how and in what manner the petitioner is incharge and responsible to run the day to day affairs of the Firm.

6.On carefully going through the complaint, it is seen that the cheque was issued in the name of A1 and it was signed by A2 and A4 and the only allegation made insofar as the petitioner A3 is concerned is extracted hereunder:



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8.The 1st Accused is the firm and the 2nd to 5th Accused are its Partners who actively participate the day-to-day affairs of the Firm and any decision taken is done jointly by all 4 Accused, viz., the 2nd to 5th Accused herein. The cheque was also issued with the knowledge and connivance of all the Accused.

7.The complaint nowhere states as to how and in what manner the petitioner was incharge and responsible to run the day-to-day affairs of the Firm. The Apex Court had an occasion to deal with this issue in **Ashok Shewakramani and Others .v. State of Andhra Pradesh and Another** reported in 2024 1 MLJ CrI.170. The Apex Court has held that insofar as the directors of the company [which will equally apply to the partners of the Firm], it must be stated as to how and in what manner they were incharge and responsible for the day-to-day affairs of the company, failing which, the directors cannot be roped in as an accused by merely reproducing the contents under Section 141 of the Negotiable Instruments Act, 1881.

8.In the light of the above decision, it is clear that the petitioner cannot be made to face the ordeal of trial. The continuation of the proceedings as against the petitioner (A3) will result in abuse of process of law which requires the interference of this Court.

9.In the result, the proceedings in STC No.4603 of 2022, on the file of XXV Metropolitan Magistrate, Egmore, is quashed insofar as the petitioner (A3) is concerned. The Court shall continue with the proceedings as against the other accused persons and the proceedings in STC No.4603 of 2022, shall be completed



within a period of six months from the date of receipt of copy of the order.

Consequently, connected miscellaneous petitions are closed.

14.03.2024

Index: Yes/No
Speaking Order/Non Speaking Order
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To

XXV Metropolitan Magistrate
Egmore.

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