IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED**: 12.03.2024**

CORAM :

THE HON'BLE MRS. JUSTICE T.V. THAMILSELVI

Crl.O.P.No.28560 of 2022
and
Crl.M.P.Nos.17530 & 17532 of 2022

K.Sadhasivam ... Petitioner

Versus

Govindaraj ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, praying to call for the records relating to the proceedings in C.C.No.4798 of 2015 on the file of the Metropolitan Magistrate, III Fast Track Court, Saidapet, Chennai-600 015 and quash the same.

For Petitioner : Mr.V.Lakshmi Narayanan

For Respondent : No appearance

ORDER

This petition has been filed to quash the proceedings in C.C.No.4798 of 2015 on the file of the Metropolitan Magistrate, III Fast Track Court, Saidapet, Chennai, in which cognizance was taken for the offences under Section 138 read with Sections 142 of the Negotiable Instruments Act.

2. The case of the prosecution is that the petitioner is doing real estate business for the past ten years. One Santhakumari appointed him as a power agent for the property situated in Porur Village, Ambattur taluk, Thiruvallur District situated within the Sub-Registration District of Kundrathur and registration district of Chennai South, vide document No.19272 of 2014. The previous power agent Mr.Govindaraj Respondent / complainant and Jayakumar herein is not properly dealing with the land matter, the owner of the land / Santhakumari cancelled the power of attorney and subsequently appointed the petitioner herein as the power agent to look after the issue and to sale the property. To get back the original document there was a memorandum of understanding entered between the respondent / defacto complainant, the petitioner / 1st accused and the 2nd accused. In terms of memorandum of understanding, A2 undertakes to pay a sum of Rs.2,61,00,000/-. Therefore, he issued Cheque dated 10.02.2015, bearing No.018098, for a sum of Rs.61,00,000/- draw on ICICI Bank, Porur, Chennai. When the said cheque was presented, the same was returned with an endorsement stating “Payment stopped by drawer”. Therefore, a complaint was lodged against the petitioner and other accused.

3. The learned counsel for the petitioner submitted that the cheque was issued only by the 2nd accused, against whom the respondent police initiated the proceedings under Section 138 of Negotiable Instruments Act. He further submitted that the petitioner is no way responsible for the said Cheque. Hence, he prays to quash the proceedings against the petitioner. To support his contention he relied the judgement reported in ***CDJ 2021 SC 186, in the case of Alka Khandu Avhad vs. Amar Syamprasad Mishra & Another,*** in which reads as follows:

> ..., A *person who is the signatory to the cheque and the cheque is drawn by that person on an account maintained by him and the cheque has been issued for the discharge, in whole or in part, of any debt or other liability and the said cheque has been returned by the Bank unpaid, such person can be said to have committed an offence Section 138 of the Negotiable Instrument Act does not speak about the joint liability. Even in case of a joint liability, in case of individual persons, a person other than a person who has drawn the cheque on an account maintained by him, cannot be prosecuted for the offence under Section 138 of the NI Act. A person might have been jointly liable to pay the debt, but if such a person who might have been liable to pay the debt jointly, cannot be prosecuted unless the bank account is jointly maintained and that he was a signatory of the cheque.*

8. Now, so far as the case on behalf of the original complaint that the appellant herein – original accused No.2 can be convicted with the aid of Section 141 of the NIA is concerned, the aforesaid has no substance.

8.1. Section 141 of the Negotiable Instrument Act is relating to the offence by companies and it cannot be made applicable to the individuals."

The petitioner is neither a signatory of the cheque nor he has joint account with another accused / A1.

4. On a perusal of the records, it reveals that there was a Memorandum of Understanding between the petitioner A1 / Sadhasivam and the defacto complainant. In respect of the money transaction pertaining to cancel the sale deed relating to the properties sold out of the said agreement, now the cheque was issued by Sadhasivam/A1. According to the defacto complainant, the cheque was issued by Saravanan, not by the petitioner / Sadhasivam. Further more the petitioner is not holding any joint account along with Saravanan nor he signed the cheque. Hence there is no prima facie material against him to prosecute him under Section 138 of Negotiable Instrument Act. As, there is no material evidence to show that he has issued a cheque with a dis-honest

intention, the ratio relied by the learned counsel for the petitioner is applicable to the facts of the case. Therefore the proceedings pending in C.C.No.4798 of 2015 on the file of the Metropolitan Magistrate, III Fast Track Court, Saidapet, Chennai is ordered to be quashed against this petitioner (A1) alone.

5. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected Miscellaneous petitions are closed.

12.03.2024

Index : Yes/No
Speaking/Non Speaking order
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T.V.THAMILSELVI, J.

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