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CrI.O.P.No. 30139 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2024

CORAM:

THE HON'BLE MR. JUSTICE P. DHANABAL

Criminal Original Petition No. 30139 of 2022

and

Criminal Miscellaneous Petition Nos. 18464 & 18467 of 2022

G. Thiyagu (alias) G. Thiyagarajan

... Petitioner/A2

Versus

Jayaraj

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of CrPC., prays to call for the records in STC.No. 584 of 2017 on the file of the Judicial Magistrate, Kangeyam and quash the same.

For Petitioner : Mr. S. Sathish

For Respondent : No Appearance



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ORDER

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This Criminal Original Petition has been filed by the petitioner/A2 seeking to quash the proceedings in STC.No. 584 of 2017 pending before the learned Judicial Magistrate, Kangeyam.

2. According to the petitioner, the respondent/Complainant has filed a complaint in STC.No. 584 of 2017 before the learned Judicial Magistrate, Kangeyam, under Section 138 of the Negotiable Instruments Act, 1881. The petitioner has resigned from the post of Director of the first Accused Company, namely, M/s.Velohar Infra Private Limited on 15.10.2016. Subsequently, a copy of the resignation letter as well as Form DIR 12 intimating his resignation from the first accused Company and the same were submitted before the Registrar of Companies/Ministry of Corporate Affairs immediately on 18.10.2016. As per the averment of the complaint, the respondent/complainant had been collected six cheques only on 05.11.2016 which are after the date of resignation as Director from



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the first accused Company. Furthermore, the petitioner has not given the aforesaid cheques to the respondent/Complainant. While that being the case, there is no any offence made out as against the petitioner. Hence, the aforesaid STC.No.584 of 2017 pending against the petitioner before the learned Judicial Magistrate, Kangeyam, is liable to be quashed.

3. The learned Counsel appearing for the petitioner would contend that the respondent/Complainant has filed a complaint in STC.No. 584 of 2017 before the learned Judicial Magistrate, Kangeyam, under Section 138 of the Negotial Instruments Act against the petitioner and other accused alleging that the petitioner was a Director of the first accused Company and six cheques had been issued on 05.11.2016 and the same were presented before the Bank of Baroda, Ullagaram Branch, for collection and the same were dishonoured as "Insufficient Funds".



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4. In fact, the petitioner/A2 was resigned from the post of Director of the first accused Company on 15.10.2016 to that effect he has also submitted Form DIR 12 along with receipts before the Registrar of Companies/Ministry of Corporate Affairs. Therefore, no *prima-facie* case is made out against the petitioner and the STC.No. 584 of 2017 pending against the petitioner is an abuse of process of law. Therefore, the STC.No.584 of 2017 pending against the petitioner before the learned Judicial Magistrate, Kangeyam, is liable to be quashed.

5. In support of his contention, the learned Counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court in **Rajesh Viren Shah v. Redington (India) Limited**, reported in **CDJ 2014 SC 101**.

6. Despite notice was served to the respondent, none appeared on behalf of the respondent. The name of the respondent was printed in the cause list. Therefore, this Court heard the arguments on the side of the petitioner and perused the materials available on record.



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7. The main contention of the petitioner is that the petitioner had resigned from the post of Director of the first accused Company on 15.10.2016 itself to that effect, he has also submitted Form DIR-12 along with receipt issued by ROC. Admittedly, even as per the complaint, the cheques were issued on 05.11.2016, but, whereas, the petitioner was resigned from the post of Director of the first accused Company on 15.10.2016 itself.

8. As far as the aforesaid judgment relied upon by the petitioner is concerned in the case of **Rajesh Viren Shah v. Redington (India) Limited**, the Hon'ble Supreme Court has categorically held in Paragraph No.10 of the Judgment dated 14.02.2024 is as follows:-

"10. The record reveals the resignations to have taken place on 9th December, 2013 and 12th March 2014. Equally, we find the cheques regarding which the dispute has travelled p the Courts to have been issued on 22nd March 2014. The latter is clearly, after the appellant(s) have severed their ties with the Respondent-Company and, therefore, can in no way be responsible for the conduct of business at the relevant time. Therefore, we have no hesitation in holding that they ought to be then entitled to be discharged from prosecution."



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9. On a careful perusal of the records, it reveals that the date of issuance of cheques on 05.11.2016, whereas, the petitioner was resigned from the post of Director of the first accused company on 15.10.2016. Therefore, the petitioner is noway related to the business activities.

10. In view of the aforesaid observation and judgment of the Hon'ble Apex Court cited *supra*, it is appropriate to quash the proceedings in STC.No. 584 of 2017 pending before the learned Judicial Magistrate, Kangeyam.

11. Accordingly, this Criminal Original Petition is allowed by quashing the proceedings in STC.No. 584 of 2017 pending before the learned Judicial Magistrate, Kangeyam as against this petitioner. Since this petitioner is also mentioned in the complaint as representing the Director of the 1st Accused Company, it is for the respondent/Complainant to take steps to include appropriate person as Director of the 1st Accused in the main complaint. Consequently, connected Criminal Miscellaneous Petitions are closed.

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P. DHANABAL, J

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