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Crl.R.C.No.190 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.190 of 2024

1.M/s.Herbs Nutra Lab Private Limited,
Rep. By its Director Mr.Ragu,
No.1, Mayana Salai, Uthiramerur Taluk,
Kilakkadi Village, Kancheepuram,
Tamil Nadu – 603 107.

2.S.Ragu

... Petitioners

Vs.

1.Shahul Hameed

2.M/s.Shahnaz Hospitality Services Private Limited,
Rep. By its Director Mrs.Ismashahnaz Imthiazahemed
Sakthi Towers, Tower 1, 4th Floor, 766,
Anna Salai, Chennai – 600 002.

3.Mrs.ISmashahnaz Imthiazahemed
Director,
M/s.Shahnaz Hospitality Services Private Limited,
D/o. Mr.Imthiazahmed Sheikhyder
Sakthi Towers, Tower 1, 4th Floor, 766,
Anna Salai, Chennai – 600 002.



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4.Mr.Andrew
S/o.Cimon Raj
Director,
M/s.Shahnaz Hospitality Services Private Limited,
Sakthi Towers, Tower 1, 4th Floor, 766,
Anna Salai, Chennai – 600 002.

5.Mr.Vidhyasagar Antony
S/o.T.Vidhyasagar,
Director,
M/s.Nuway Healthcare Products Private Limited,
Having Office at:
Door No.256, 9th Street Extension,
Gandhipuram, Coimbatore – 641 012.

... Respondents

Prayer: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to call for the records and set aside the order dated 22.09.2023 passed in C.C.No.167 of 2023 passed by the District Munsif cum Judicial Magistrate, Uthiramerur.

For Petitioner : Mr.J.Pravin

ORDER

The petitioner as complainant filed a private complaint against five persons in C.C.No.167 of 2023 before the learned District Munsif cum Judicial Magistrate, Uthiramerur for the offence under Sections 384, 387, 419, 421, 423, 426, 447, 465, 467, 468, 469, 471, 500, 506 and 120B IPC



read with Section 34 IPC. Proof Affidavit of the complainant Raghu and proof affidavit of Perumal Sundharam, Manager of the complainant Company were filed. Based on the proof affidavit, complaint and the documents submitted, the Trial Court by order dated 22.09.2023 recorded that prima facie case is made out for the offence under Sections 419 and 421 IPC as against A1 only, cognizance taken under Sections 419 and 421 IPC, issue summons to A1 and as regards four other persons who have been arrayed as accused, it is recorded that prima facie case is not made out. Against which the present revision petition is filed.

2.Since the order passed by the Trial Court is legally wrong and no prejudice would be caused to the respondents/proposed accused, notice to the respondents is dispensed with.

3.The contention of the learned counsel for the petitioner is that the petitioner along with his complaint filed 16 documents and examined two witnesses by way of filing proof affidavit but the Trial Court had not considered the proof affidavit and the documents in its entirety. In this case,



the cognizance order does not reflect application of mind and ingredients of the offence not spelt out, hence it is not sustainable. He further submitted that there is no necessity for the cognizance order to be in detail but it should contain the required particulars, which is not available in the impugned order. He would further submit that case against A2 to A5 clearly made out on the evidence and materials produced but the Trial Court failed to look into the same. Hence, he prayed for setting aside the cognizance order passed on 22.09.2023 and direct the Trial Court to record the statement of the witnesses and consider the documents produced and after application of mind, pass a detailed cognizance order.

4.Considering the submissions made and on perusal of the materials, it is seen that the affidavit of two complainant witnesses, namely, S.Raghu and Perumal Sundharam but recording of such proof affidavit in evidence without examining them as witnesses is not proper. The Trial Court ought to have first recorded the sworn statement of complainant witnesses, thereafter examine the witnesses, record their statements, peruse the documents and thereafter cognizance order to be passed. But in this case it



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is not done so. In view of the same, this Court is inclined to set aside the cognizance order passed by the Trial Court.

5. Accordingly, the cognizance order passed by the learned District Munsif cum Judicial Magistrate, Uthiramerur in C.C.No.167 of 2023 dated 22.09.2023 is hereby set aside. The Trial Court is directed to examine witness, record statements and consider the materials afresh following the procedures contemplated in Criminal Procedure Code and thereafter on application of mind, if found prima facie case is made out, cognizance can be taken and to proceed with the case, if no case is made out appropriate orders to be passed.

6. With the above direction, the Criminal Revision Petition stands allowed.

15.02.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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M.NIRMAL KUMAR, J.

cse

To

The District Munsif cum Judicial Magistrate,
Uthiramerur.

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15.02.2024