



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 02.09.2024

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The Hon'ble Mr.Justice D.BHARATHA CHAKRAVARTHY

CRL OP(MD)Nos.4327 & 4332 of 2021

and

CRL MP(MD)Nos.2430 & 2436 of 2021

Mani

... Petitioner (In both cases)

Vs

Kumar

... Respondent (In both cases)

COMMON PRAYER :- Criminal Original Petition filed under Section 528 BNSS, to quash the impugned Cr.M.P.No.s.19 and 20 of 2021 in CC.Nos. of 2021 on the file of the Fast Track Court (Magisterial Level), Kovilpatti.

(In both cases)

For Petitioner : Mr.Vishnuvarthanan.P.M

For Respondent : Mr.M.Prabu



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COMMON ORDER

These Criminal Original Petitions are filed to quash the proceedings pending in CC.Nos.152 and 153 of 2021 file of the Fast Track Court (Magisterial Level), Kovilpatti. The said two cases are filed as a private complaint under Section 200 of the Cr.P.C., for the offence under Section 138 of the Negotiable Instruments Act.

2. The case of the complainant is that the respondent/petitioner entered into a partnership with the accused and as per the agreement, he has invested a sum of Rs.5,25,000/- and Rs.3,50,000/- respectively and for every month as profit, a sum of Rs.22,500/- and Rs.15,000/- had to be paid to him and if the same is not paid, the amount will be returned by the cheque, which is already given post dated. Accordingly, the said two cheques which were given for the respective amounts were filled up and presented and the same was dishonored as insufficient funds and hence, the complaint. Aggrieved by the said private complaints, the present quash applications are filed.

3. Mr.Vishnuvarthanan.P.M, learned Counsel appearing on behalf



the petitioner would submit that even admittedly as per paragraph No.3 and 4 of the complaint, it is stated that the petitioner is a sleeping partner along with the accused and therefore, the amount is due towards his contribution/share. In this regard, this Court speaking through Justice N.Anand Venkatesh in ***Sudharsan vs. Rajasoundaram*** reported in **2019 (3) MWN (Cr.) DCC 182(Mad.)**, had taken a view that when it comes to the payment of contribution/share in the partnership, the Partnership Act clearly prescribed the procedure under Section 11 and 13 of the said Act and it is for the partner to approach the civil Court and unless the civil Court decides after taking into account the profit and loss accounts and what is leftover is only to be shared between the parties and therefore, the post dated cheque which was given at the instance of the partnership cannot be encased by one partner and a case of dishonour of cheque cannot be filed on such basis. Therefore, he would submit that even a reading of the present complaint, it would be clear that the respondent is a sleeping partner is claiming only the contribution/share in the partnership and therefore, the complaint is liable to be quashed.

4. The prayer is opposed by the learned Counsel for the respondent by producing the agreements. He would submit that the agreement



clearly stated the fixed income between the parties and therefore, in this case, there is no question of applying the above said principle.

5. Be that as it may, the ratio of the above judgement relied upon by the learned Counsel for the petitioner is that the contribution/share of a partner has to be determined only after taking into account the accounts of the partnership firms and only after determining the profit and loss, the amount payable as a contribution/share to the partner would become crystallized and therefore, on the basis of a post dated cheque, the complaint under Section 138 of the Negotiable Instruments Act, should not have been filed. Whereas, in the instant case, the clauses of the agreement between the parties have to be tested. Even there is fixed return and also a fixed amount of going away from the partnership is also fixed. Therefore this Court, at this juncture, does not want to render any opinion about the nature of the agreement. It will be open for the petitioner to raise the very same argument before the trial Court. Whether any amount has been paid, whether it is reference to the partnership business, whether the agreement is in the nature of partnership, whether any profit and loss has to be ascertained or whether it is only a fixed amount, etc., will all have to be comprehensively considered by the trial



Court. That can be done only after letting in evidence by both sides and by duly considering the nature of the agreement. Since the nature of the agreement is different, I am not in a position to straight away apply the ratio as contained in the said judgment of this Court or another and the applicability or otherwise can be determined only after detailed appreciation of evidence.

6. In view thereof, leaving it open for the petitioner to raise the very same plea before the trial Court and it is for the trial Court to consider the same in detail, I am not inclined to entertain this application. Considering the fact that the cases are pending from the year 2021, the trial Court is requested to consider the cases for expeditious disposal.

7. With the above observations, these Criminal Original Petitions are disposed of. Consequently, connected miscellaneous petitions are closed.

02.09.2024

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NCC : Yes/No
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D.BHARATHA CHAKRAVARTHY,J

jbr

ORDER
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