



Crl.O.P.(MD)No.11624 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 20.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.(MD) No.11624 of 2022
and
Crl.M.P.(MD).Nos.7314 & 7316 of 2022

C.Karthikeya Prabu

... Petitioner

Vs.

Sri Diamond Shipping Agencies Private Limited,
M/s.Diamond Shipping Agencies Private Limited,
through its Joint Managing Director,
P.Sivakumar

...Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the proceedings in C.C.No.181 of 2021 based upon the private complaint lodged by the respondent / complainant on the file of the learned Judicial Magistrate No.2, Thoothukudi and quash the same.

For petitioner : Mr.G.Mariappan

For Respondent : Mr.R.Gandhi
Senior Counsel
for Mr.L.Siva

ORDER

This petition has been filed seeking to quash the private complaint in C.C.No.181 of 2021 pending before the learned Judicial Magistrate No.2, Thoothukudi, against the petitioner herein.



2. The case of the prosecution is that the petitioner was the erstwhile Joint Managing Director in the respondent / Company. It is alleged that the petitioner had voluntarily resigned his job from the respondent / Company and he did not return back the house and car belonged to the company. Hence, the respondent / Company had sent a legal notice to surrender the above said properties to the respondent. The petitioner received the said legal notice and he sent a reply notice to the respondent / Company. But the same was not satisfied by the respondent herein. Hence, the respondent filed a private complaint before the learned Judicial Magistrate No.2, Thoothukudi and the same was taken on file in C.C.No.181 of 2021 for the offence punishable under Section 452 of the Companies Act, 2013 r/w Section 200 Cr.P.C.

3. The learned counsel appearing for the petitioner would submit that the respondent has filed a private complaint before the learned Judicial Magistrate No.2, Thoothukudi. However, the said complaint was challenged before this Court on the ground of jurisdiction. Section 435 of the Companies Act, 2013, provides that the offences punishable under this Act, shall be triable by the Special Court established by the Central Government and such Special Court has the jurisdiction to try offences under the Act. But, in the case on hand, the



respondent has filed a private complaint before the Judicial Magistrate Court. Therefore, the trial Court has no jurisdiction to try the private complaint under the said Act lodged by the respondent.

4. The learned counsel appearing for the respondent would submit that there are materials available to proceed with the case as against the petitioner herein and at the threshold, the criminal proceedings cannot be quashed and the charges against the petitioner have to be gone into only at the time of trial and hence, he prayed for dismissal of the petition.

5. In the above circumstances, the trial court has rightly taken the case on file and this Court is of the considered view that no prejudice would be caused to the petitioner, if she is subjected to due trial as sufficient opportunity would be given to the petitioner to put forth her defence. The petitioner cannot be let by quashing the charges framed against him as that would completely undermine the alleged act, which is the subject matter of criminal trial pending against him. Useful reference in this regard can be made to the decision of the Hon'ble Apex Court in ***State of Haryana – Vs - Bhajan Lal (1992 SCC (Crl.) 426)***



6. For the reasons aforesaid, this Court finds no ground or scope to quash the private complaint in C.C.No.181 of 2021 based on the file of the learned Judicial Magistrate No.2, Thoothukudi.

7. The learned counsel appearing for the petitioner requests before this Court to permit the petitioner to canvass all those points raised in this petition before the trial Court at the time of trial and he would further request that this Court may consider to dispense with the personal appearance of the petitioner before the court below.

8. Taking into consideration the request as made by the learned counsel for the petitioner, the appearance of the petitioner before the trial court is dispensed with except for her appearance for the purpose of receiving the copy of the proceedings u/s 207 Cr.P.C., framing of charges, questioning under Section 313 Cr.P.C. and on the day on which judgment is to be pronounced. However, if for any particular reason, the presence of the petitioner is necessary, the trial court, at its wisdom, shall direct her appearance on those days. Liberty is granted to both the parties to canvass all those points raised in this petition before the trial Court at the time of trial.



Crl.O.P.(MD)No.11624 of 2022

9. Accordingly, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

20.03.2024

Index : Yes/No

Internet : Yes/No

NCC : Yes / No

TSG

To

1.The Judicial Magistrate No.II, Thoothukudi.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

M.DHANDAPANI. J.



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Crl.O.P.(MD)No.11624 of 2022

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