



Crl.O.P.(MD)No.11725 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P.(MD)No.11725 of 2022

and

Crl.M.P.(MD)No.7386 of 2022

T.Rajendran

... Petitioner

vs.

1.Sakthi Enterprises,
A partnership through one of its Partner
A.Gurusamy Chettiar,
Represented through its Power of Attorney,
Holder G.Loganathan
S/o.A.Gurusamy Chettiar,
Door No.174, Ward 31B, Kamakshi Nagar,
Near Mirchi Yard,
Guntur – 522 004

2.Pabros Spices Pvt. Ltd.,
Through its Director,
E.Saravanan,
D-9B, 1st Floor, Gem Apartments,
27th Cross Street, Maharaja Nagar,
Palayamkottai – 627 011

3.E.Saravanan

... Respondents



Crl.O.P.(MD)No.11725 of 2022

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records of the impugned proceedings in S.T.C.No.591 of 2022 on the file of the Judicial Magistrate Court, Sankarankovil and quash the same as illegal insofar as the petitioner is concerned.

For Petitioner : Mr.K.Jeyamohan

R1 : Unserved

For R2 : Mr.T.Selvan

R3 : No Appearance

ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.591 of 2022 pending on the file of the learned Judicial Magistrate, Sankarankovil.

2. The 1st respondent/complainant filed the private complaint against the Company, Managing Director and the Director of the Company for the offence under Section 138 of Negotiable Instrument Act. It is alleged in the complaint that there was a business transaction, for which, the Company had to pay a sum of Rs.49,66,240/- (Rupees Forty Nine Lakhs Sixty Six Thousand Two Hundred and Forty only). Towards this liability, cheques were issued to the tune of Rs.20,00,000/- (Rupees Twenty Lakhs only). When these cheques were presented for collection, it was dishonored with



Crl.O.P.(MD)No.11725 of 2022

WEB COPY

an endorsement "refer to drawer branch". Thereafter, statutory notice was issued, and since the cheque amount was not paid, the private complaint came to be filed before the Court below.

3. Heard Mr.K.Jeyamohan, learned counsel appearing for the petitioner.

4. The 1st respondent has been served with private notice on 25.03.2024, and proof of service has also been filed. There is no appearance for the 1st respondent either in-person or through counsel.

5. The main ground that was urged by the learned counsel for the petitioner is that the liability is that of the Company and A2 is the Managing Director and was also the signatory of the cheque. The petitioner has been added as an accused in his capacity as a Director, and there are absolutely no allegations in the complaint as to how and in what manner the petitioner is in-charge and responsible for running the day-to-day affairs of the Company. Therefore, the learned counsel submitted that the private complaint as against the petitioner (A3) is unsustainable and requires the interference of this Court.



Crl.O.P.(MD)No.11725 of 2022

WEB COPY

6. The issue raised by the learned counsel for the petitioner is squarely covered by the recent judgment of the apex Court in ***Susela Padmavathy Amma vs. M/s.Bharti Airtel Limited in S.L.P. (Criminal)Nos.12390 – 12391 of 2022 dated 15.03.2024***. The apex Court, after considering all the earlier judgments, has categorically held that insofar as the Director is concerned, there must be an averment as to how and in what manner he was in-charge and responsible for running the day-to-day affairs of the Company. In the absence of the same, the complaint becomes unsustainable.

7. In the case in hand, the petitioner is not the signatory of the cheque and it is A2, who is the signatory of the cheque and also the Managing Director of the Company. Therefore, if the petitioner is added as an accused, there must be specific averment in the complaint as to how and in what manner the petitioner is in-charge and responsible for running the day-to-day affairs of the Company. Since the same is absent, the proceedings as against the petitioner will result in abuse of process of law.

8. In the result, the proceedings, in S.T.C.No.591 of 2022 on the file of the learned Judicial Magistrate, Sankarankovil, is hereby quashed



Crl.O.P.(MD)No.11725 of 2022

WEB COPY

insofar as the petitioner is concerned. The Court below shall proceed further to deal with the case in S.T.C.No.591 of 2022 as against the A1 and A2, and the proceedings shall be completed within a period of six months from the date of receipt of a copy of this order.

9. Accordingly, this Criminal Original Petition is allowed with the above directions. Consequently, connected Criminal Miscellaneous Petition is closed.

27.11.2024

mkn

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No

To

The Judicial Magistrate Court,
Sankarankovil



WEB COPY



Crl.O.P.(MD)No.11725 of 2022

N. ANAND VENKATESH, J.

mkn

Crl.O.P.(MD)No.11725 of 2022
and
Crl.M.P.(MD)No.7386 of 2022

27.11.2024