



CrI.O.P.(MD)No.14909 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.12.2024**

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.(MD)No.14909 of 2022

and

CrI.M.P.(MD) No.9688 of 2022

J.K.Govindarajalu

... Petitioner

Vs.

1.T.K. Boopathi

2.M/s.K & N Trade,
Rep. by its Managing Partners

3.L.Kannan

4. P.Vijayakumar

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, call for the entire records connection with case in CC.No.338 of 2017 on the file of Learned Judicial Magistrate, Fast Track Court @ Magisterial Level, Karur and quash the same as against the Petitioners herein.

For Petitioners : Mr.Niranjan S.Kumar



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ORDER

This petition has been filed to quash the proceedings pending in C.C.No.338 of 2017 on the file of the Judicial Magistrate, Fast Track Court at Magisterial Level, Karur.

2.The respondents filed a private complaint against the firm and its partners on the ground that a sum of Rs.5,00,000/- was borrowed by A3 and A4 and the same was agreed to be repaid back with interest. In order to discharge this liability, a post-dated cheque was issued on behalf of the partnership firm signed by A3 for a sum of Rs.5,00,000/-. When this cheque was deposited, it was returned with an endorsement 'exceeds arrangement'. Pursuant to the same, a statutory notice was issued and the private complaint came to be filed.

3.Heard the learned counsel for the petitioner. The notices that were sent to the first respondent at least on five occasions was returned with an endorsement 'no such person in the address'. The notice was sent to the address which has been mentioned in the complaint. Therefore, this Court directed the learned counsel for the petitioner to



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serve the notice on the counsel appearing on behalf of the first respondent before the trial Court. Accordingly, the counsel has been served and proof of service has been filed. Hence, the service is complete insofar as the first respondent is concerned. There is no representation either in person or through counsel. The notice to the other respondents is not very relevant since the other respondents are the other accused persons shown in the complaint.

4.The main ground that was urged by the learned counsel for the petitioner is that this petitioner (A2) had retired from the partnership firm in the year 2009 itself. To substantiate the same, the learned counsel relied upon the documents dated 29.10.2009 and 30.10.2009. Therefore, it was contended that at the time when the cheque was issued in favour of the first respondent in the year 2011, the petitioner was not even a partner in the firm.

5.The next ground that was urged is that there are no necessary averments in the complaint as mandated under Section 141 of the Negotiable Instruments Act, 1881.



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6.Insofar as the first ground is concerned, the necessary documents have been placed before this Court and this Court finds that those documents are unimpeachable character which can be acted upon. Hence, if the petitioner had retired from the partnership firm in the year 2009 itself, he cannot be fastened with the liability that arose in the year 2011.

7.The first respondent has added the name of the petitioner as an accused without making necessary averments as to how and in what manner the petitioner was in charge and responsible for running the day-to-day affairs of the partnership firm. In view of the same, the mandate under Section 141 has not been satisfied.

8.In the light of the above discussion, the continuation of the proceedings as against the petitioner (A2) will result in abuse of process of law and the same requires the interference of this Court.

9.In the result, the proceedings in C.C.No.338 of 2017 on



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the file of the Judicial Magistrate, Fast Track Court @ Magisterial Level, Karur, is hereby quashed insofar the petitioner is concerned. This Criminal Original Petition is accordingly allowed. The Court below is directed to proceed further with the case as against the other accused persons and complete the proceedings in C.C.No.338 of 2017 within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

04.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PKN

To

The Judicial Magistrate,
Fast Track Court @ Magisterial Level,
Karur.



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N.ANAND VENKATESH,J.

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