



CrI.O.P.No.18975 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2025

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

CrI.O.P.No.18975 of 2023

and

CrI M.P.Nos.12683 & 12684 of 2023

B.V.V.S.S.Krishnaprasad

B.V.V. Paper Industries Limited as Managing Director,
Door No.A16-Soundararaja Krishna Murthi Street,
Gandhi Nagar, Udumalpet,
Tamil Nadu – 642 113.

....

Petitioner

Vs

R.Balasundaram

Proprietor,
Balasundaram Waste Paper Mart,
No.39, Ponniamman Koil Street,
Kottur, Chennai – 600 085.

....

Respondent

Prayer: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order in CrI.M.P.No.5139 of 2023 in C.C.No.1711 of 2003 before the Metropolitan Magistrate at Saidapet, Chennai – 15 as against the petitioner.

For Petitioner : Mr.V.T.Narendiran

For Respondent : Mr.A.Nagarajan



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ORDER

WEB COPY This Criminal Original Petition has been filed challenging the order dated 17.07.2023 passed in Crl.M.P.No.5139 of 2023 in C.C.No.1711 of 2003 on the file of the Metropolitan Magistrate, Fast Track Court No.III, Saidapet, Chennai, thereby dismissing the petition filed under Section 305 of Cr.P.C.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The petitioner is one of the accused in the complaint lodged by the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act. The complaint has been filed as against four accused. The first accused is the Company represented by the petitioner, who was the Managing Director of the said Company. As far as the fourth accused, the complaint was quashed by this Court. Insofar as the second accused is concerned, he died and the charges abated as against him. The petitioner is the only one available to face the prosecution initiated for the offence under Section 138 of the Negotiable Instruments Act. Thereafter, the Company itself was wound up by the creditors and now the Interim Resolution Professional has been appointed to take care of the affairs of the Company, viz., the first accused.



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4. In fact, at the instance of the respondent, the petitioner was appointed as the representative of the first accused Company, by an order dated 22.11.2017, under Section 305 of Cr.P.C. Thereafter, the Company was wound up and the Interim Resolution Professional was appointed to take care of the affairs of the first accused Company. Therefore, the petitioner filed a petition under Section 305 of Cr.P.C to delete his name as the representative of the said Company. However, the Trial Court dismissed the same at the instance of the respondent and the respondent was permitted to represent the first accused. Now, the petitioner cannot escape from the liability of the first accused Company by striking his resolution.

5. The learned counsel for the petitioner relied upon the Judgment of this Court reported in **2020 (1) LW (Crl.) 278** in the case of ***M/s.Nathellasampath Jewellery (P) Ltd., rep. by Nathella Ranganatha Gupta & another Vs. Hemant Mehta***, in which this Court held that once the Interim Resolution Professional is nominated and appointed by the Tribunal, he takes complete charge of the Company and he alone can prosecute and being prosecuted for and on behalf of the Company. Once the Interim Resolution Professional is appointed, the erstwhile Directors cannot represent the Company at all in any proceedings.



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6. The learned counsel for the respondent would submit that the petitioner, being the Managing Director of the first accused company, cannot escape from the liability of the Company merely because the company may be wound up. In support of his contention, he relied upon the Judgment reported in **(2023) 10 SCC 545** in the case of ***Ajay Kumar Radheyshyam Goenka Vs. Tourism Finance Corporation of India Limited***, in which the Hon'ble Supreme Court of India held that once the corporate debtor comes under the resolution process, its erstwhile Managing Director cannot continue to represent the company. Even then, its erstwhile Directors may not be able to take advantage of the situation and the prosecution can proceed against the Directors.

7. A perusal of the records reveals that the first accused Company in C.C.No.1171 of 2003 was wound up in the year 2017 itself. Even before winding up of the first accused company, at the instance of the first accused, the petitioner was permitted to represent on behalf of the first accused company, who is being the Managing Director of the company. After the winding up of the company, the petitioner cannot represent the first accused company, since the Interim Resolution Professional has already been appointed to take care of the affairs of the first accused company.

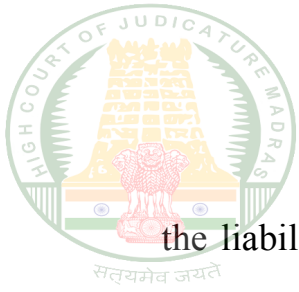


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8. The Hon'ble Supreme Court of India, as well as this Court, repeatedly held that once the Interim Resolution Professional is appointed, the erstwhile Directors cannot represent the company at all in any proceedings. Therefore, the petitioner rightly filed a petition to delete his name on the representation capacity of the first accused company. The first accused company can very well appoint an Interim Resolution Professional. However, the Trial Court, without considering the facts and circumstances, mechanically dismissed the application filed by the petitioner on the ground that the petitioner had already been permitted to represent on behalf of the first accused company at the instance of the respondent.

9. In view of the above, the order dated 17.07.2023 passed in CrI.M.P.No.5139 of 2023 in C.C.No.1711 of 2003 on the file of the Metropolitan Magistrate, Fast Track Court No.III, Saidapet, Chennai, cannot be sustained and is liable to be quashed. Accordingly, it is hereby set aside. The petitioner's name is hereby deleted from the representative capacity of the first accused company. The respondent is at liberty to substitute the Interim Resolution Professional to represent on behalf of the first accused company. It is made clear that though the first accused company is dissolved, the petitioner, being the Managing Director of the first accused company, cannot escape from



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the liability of the company. The Trial Court is directed to complete the trial

within a period of three months from the date of receipt of a copy of this order.

10. In the result, this Criminal Original Petition stands allowed.

Consequently, connected miscellaneous petitions are closed.

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Index: Yes/No

Internet: Yes/No

To

The Metropolitan Magistrate,
Fast Track Court No.III,
Saidapet, Chennai.



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G.K.ILANTHIRAIYAN,J.

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