

(2004) 11 MAD CK 0140

In the Madras High Court

Case No : Criminal O.P. No's. 36018 to 36021 of 2004

M.S. Ahamed Mohideen and Another

APPELLANT

Vs

Salson

RESPONDENT

Date of Decision : 25-11-2004

Acts Referred:

Citation : (2005) 1 ALD(Cri) 42 : (2005) 4 BC 440 : (2005) CriLJ 1353 : (2005) 1 LW(Cri) 88 : (2005) 2 RCR(Criminal) 731

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : M. Azmal Khan, for the Appellant;

Final Decision : Dismissed

Judgement

V. Kanagaraj, J.—The above Criminal Original Petitions have been filed to call for the records relating to C. C. Nos. 6609 to 6612 of 2003 on the file of the VIII Metropolitan Magistrate Court, George Town at Chennai-1.

2. The case of the petitioners is that the petitioners are accused No. 1 and 3 in the above cases and it is the second accused who issued the cheques in favour of the respondent on behalf of the firm in which admittedly, the petitioners are partners.

3. The petitioners contention is that they were not assigned with such responsibilities to decide regarding the issuance of the cheques and therefore, kept away from such assignments and hence, according to law, they cannot be prosecuted.

4. Today, when the above Criminal Original Petitions, all relating to one and the same parties but on issuance of different cheques which bounced, four cases have been made out by the respondent. It is the admitted case of the petitioners that they are the partners. The Court has every reason to arrive at the preliminary conclusion to hold that they have got every say in each and every activity of the firm unless on evidence it is ruled out that these petitioners have

nothing to do with regard to the management, maintenance or issuance of cheques. Therefore, so far as this point is concerned, it has to be effectively decided on such evidence placed on record before the trial Court and hence this Court cannot go into such of the questions and is not in a position to appreciate particularly to find out whether these petitioners did not have such powers or were not parties, pursuant to which the cheques came to be issued by the second accused.

5. In this regard, the learned counsel for the petitioner would also cite the judgment of the Honourable Supreme Court delivered in State through CBI Vs. Dr. Narayan Waman Nerukar and Another, . However, the petitioners have not produced any authenticated document to prove that they have no vital role to play in running the firm.

6. On the contrary, a plain reading of the complaint would accuse all the accused being the partners of the firm each having such responsibilities towards the commitments of the firm, intentionally made the cheques to be issued without arranging for their encashments. The respondent /complainant would further submit that they have applied and obtained certificates in Form-A from the Registrar of Firms on 7-2-2003. As per this vital document, all the four accused are found as partners of M/s. Everest Steel Trading Corporation. As such, all the partners are equally responsible for the cheques issued by the above said firm and it is only on such understanding and approval only all the four cheques were issued through the second accused and therefore, all the above cases have been registered against all the partners and the petitioners being the partners of the firm which issued the cheques become preliminarily liable to answer the charge. If at all the petitioners are having a very strong case to offer that they have absolutely nothing to do with any of the commitments of the partnership firm, they can show in trial. So, it was only according to any such valid evidence in trial and hence they cannot seek for quashing the proceedings initiated in the cases cited above. There are no averments to the effect that the offence was committed with consent or connivance of all the partners in the manner of issuance of cheques whereas in the case in hand as extracted are glaring and pointed and therefore, the judgment cited above cannot be applied to the facts of the cases in hand and in these circumstances, the only question that this Court could only arrive at is to dismiss the above quash petition filed by the petitioners therein and the same is ordered accordingly.

In result,

(i) all the above quash petitions do not merit acceptance of admission for the grant of prayers but they become only liable to be dismissed and the same is dismissed accordingly;

(ii) consequently, connected CrI. M. P. Nos. 11275 to 11282 of 2004 are closed;

(iii) it is made clear that the findings or the observations made here will not in any manner have a bearing on the trial to be held by the trial Court and the trial

Court is at liberty to proceed with in accordance with how and the procedure established thereunder and to decide the case.