
(2010) 07 MAD CK 0184

In the Madras High Court

Case No : Criminal O.P. No. 12467 of 2007 and Criminal M.P. No. 1 of 2007

Nivi Knit Fashions

APPELLANT

Vs

N. Rajkumar rep. by its Power Agent P. Nagarajan

RESPONDENT

Date of Decision : 09-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 141

Citation : (2010) 07 MAD CK 0184

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : B. Nambiselvan, for the Appellant; No appearance, for the Respondent

Final Decision : Allowed

Judgement

P.R. Shivakumar, J.—There is no representation for the respondent. The submissions made by Mr. B. Nambiselvan, learned Counsel for the petitioner were heard.

2. This petition has been filed invoking the inherent powers of the High Court u/s 482 Cr.P.C. seeking an order quashing the criminal proceedings

initiated on the file of the learned Judicial Magistrate No. 1, Udumalpet in C.C. No. 218 of 2006 based on the complaint of the respondent herein

preferred u/s 200 Cr.P.C. alleging commission of an offence punishable u/s 138 of the Negotiable Instruments Act. Nivi Knit Fashions, a

proprietary concern and its Proprietor E. Mohanraj are the two persons arrayed as accused in the above said case. The present petition has been

filed in the name of Nivi Knit Fashions represented by its proprietor E. Mohanraj.

3. The short point that has arisen in this petition is, "whether the prosecution of

a proprietary concern in its name apart from prosecuting the proprietor is maintainable?

4. The same is a covered point. It is unnecessary to refer to all the cases in which the said question has been decided. Suffice to cite two of such judgments of this Court alone. In *N. Gopalan v. K. Udhayakumar* reported in 2009 (4) CTC 217, this Court considered the maintainability of the prosecution of a mandate holder or authorised signatory, who was not the proprietor of the proprietary concern, on whose behalf dishonoured cheque was issued. While holding that such a mandate holder or authorised signatory who had signed the cheque on behalf of the proprietary concern/proprietor would not be liable to be prosecuted for the offence punishable u/s 138 of the Negotiable Instruments Act, since the cheque was not issued on an account maintained by him with the banker, this Court, after elaborate discussion regarding the definition of Company found in Section 141 of the Negotiable Instruments Act, held that a proprietary concern was not covered by the said definition and hence a proprietary concern could not be prosecuted. Similar was the view taken by another learned Judge of this Court in *S.K. Real Estates*, represented by its Proprietor *S.K. Krishnamoorthy and Anr. v. S. Ahmed Meeran* reported in I (2002) BC 491. In the said case, it was held that a proprietary concern was not a separate entity, nor was it a concern that is covered by the definition of Company found in Section 141 of the Negotiable Instruments Act and hence the prosecution of the proprietary concern along with the proprietor could not be maintained. However, in the said case, this Court made it clear that though the prosecution of the proprietary concern could not be maintained, the prosecution of the proprietor could be maintained and could be continued. The said ratio squarely applies to the case on hand.

5. Accordingly this Court holds that the prosecution initiated against Nivi Knit Fashions, the proprietary concern shall be quashed and at the same time, the prosecution initiated against E. Mohanraj, the proprietor shall be continued.

6. In the result, this petition is allowed and the criminal proceedings initiated against the proprietary concern Nivi Knit Fashions is quashed on the ground that the prosecution of the proprietary concern could not be maintained.

It is hereby clarified that prosecution of the proprietor, E.

Mohanraj could be maintained and could be continued. Consequently, the connected miscellaneous petition is closed.