

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2018

CORAM:

THE HON'BLE MRS.JUSTICE R. HEMALATHA

Crl.O.P.No.8140 of 2012

K.Sakthi Raghul

... Petitioner

Vs.

1.S.Elango

2.Bharat Oil Mills, rep by its
Managing Partner, R.Shanmugasundaram
101 Park Road, Erode 3.

3. R.Shanmugasundaram
101 Park Road, Erode -3.

... Respondents

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code to call for the records on the file of the Judicial Magistrate No.1, Erode in C.C.No.316/2018 and quash the same as illegal, incompetent, groundless and without jurisdiction.

For Petitioner : Mr.V.Raghavachari
For Respondents : Mr.I.C.Vasudevan for R1.

O R D E R

The petitioner is the third accused in C.C.No.316/2018 on the file of Judicial Magistrate No.I, Erode. The respondent/complainant filed a complaint before Judicial Magistrate, No.I, Erode against M/s.Bharath Oil Mills, represented by Mr.R.Shanmugasundaram, Mr.R.Shanmugasundaram and Mr.K.Sakthi Raghul S/o. Kamalanathan for the alleged offence punishable under Section 138 of the Negotiable Instruments Act.

2. The case of the complainant is that the accused borrowed a sum of Rs.3,50,000/- from the respondent/complainant on 06.01.2008 and issued a post dated cheque dated 11.03.2008 in favour of the respondent/complainant for a sum of Rs.3,50,000/-. The said cheque was drawn on State Bank of India, Commercial Branch, Erode-3 and when it was presented for encashment through the respondent/complainant bankers, the same was returned for the reason "insufficient funds". Therefore, the respondent/complainant issued a notice dated 11.03.2008 to the

petitioner/accused and since the accused did not come forward to make good the payment, the respondent/complainant filed the complaint before the Judicial Magistrate, Erode for the alleged offences under sections 138 and 142 of the Negotiable Instruments Act.

3. The present petitioner is the third accused. In his affidavit filed along with present petition, he has contended that the learned Judicial Magistrate, No.1, Erode, without ascertaining the material facts, has taken cognizance of the offences under Sections 138 and 142 of the Negotiable Instruments Act and that the petitioner was neither a partner nor a signatory to the cheque on the date of the transaction.

4. A perusal of the entire complaint shows that there are no averments in the complaint that the petitioner was involved in the day to day affairs of the first accused firm. Time and again it has been held by the Apex Court that if a liability under section 141 of the Negotiable Instruments Act is sought to be fastened vicariously on a person connected with a company, a clear case should be spelled out in the complaint against the person sought to be made liable and in the absence of averments that partner/director was in charge of the day to day activities of the company/partnership firm, he cannot be prosecuted.

5. Per contra, the learned counsel for the respondent would contend that the present petitioner was a partner in the firm as could be seen from Form A of Registration of Firms and that he is liable to be prosecuted. In any event, since there are no averments in the complaint that the petitioner was in charge of day to day affairs of the company on the date of the alleged transaction, he cannot be made vicariously liable under Section 141 of the Negotiable Instruments Act. As far as the other accused are concerned, there are prima facie materials for proceeding further and the learned Judicial Magistrate - I, Erode is directed to dispose of the case in C.C.No.316 of 2018 within a period of three months from the date of receipt of a copy of this order.

6. In the result, the petition is allowed and C.C.No.316 of 2018 on the file of Judicial Magistrate-I, Erode is quashed as against the present petitioner alone.

-s/d-

Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

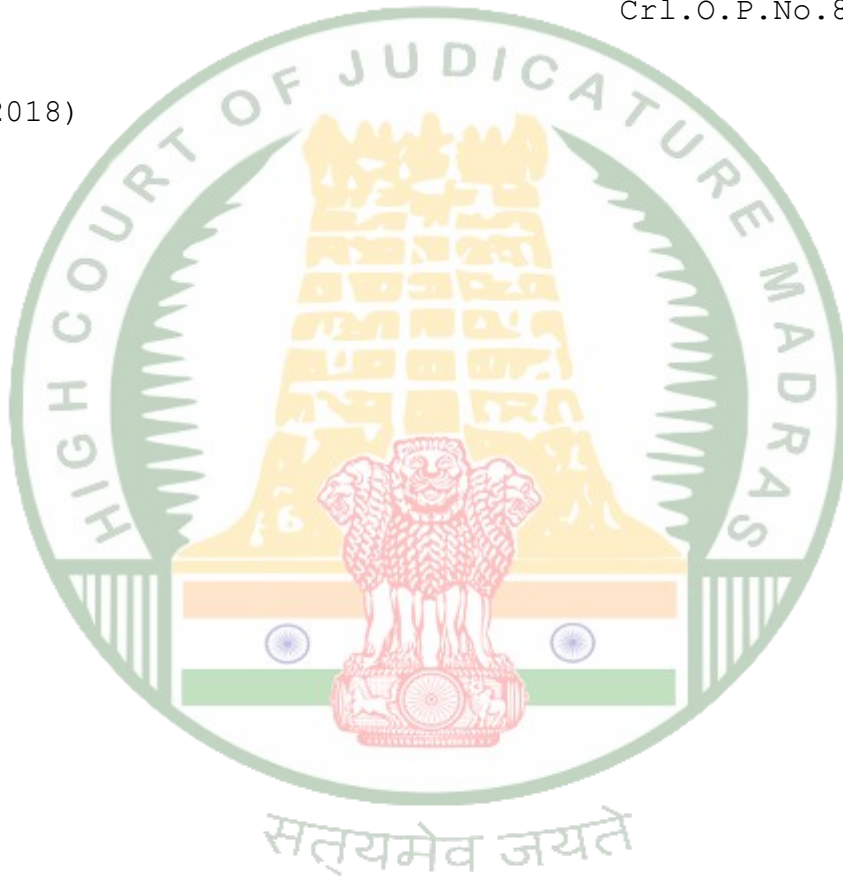
To

1. The Judicial Magistrate No.I
Erode.

+1 CC to Mr.I.C. Vasudevan, Advocate sr 40761.
+1 CC to Mr.V. Raghavachari, Advocate sr 40164.

CrI.O.P.No.8140 of 2012

SP(17/07/2018)



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