

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.22331 of 2018 and
Crl.M.P.Nos.12363 & 12364 of 2018

K.Balamurugan

...Petitioner

-Vs-

M/s.Sungrace Creations,
Prop R.Mahadevan,
S/o.M.A.Ramasamy,
35/2, SK Nagar, Seelanayakenpatty,
Salem-636 201

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in respect of the complaint filed by the respondent herein in STC.No.385 of 2017 against the petitioner on the file of the learned Judicial Magistrate No.IV, Salem and quash the same.

For Petitioner : Mr.R.Nalliyappan

For Respondent : Mr.S.Vijayakumar

ORDER

The criminal original petition has been filed to quash the proceedings in S.T.C.No.385 of 2017 on the file of the learned Judicial Magistrate No.IV, Salem having been taken cognizance for the offences under Sections 138 & 142 of Negotiable Instruments Act.

2.The learned counsel for the petitioner submits that there are two accused in the complaint. The first accused is the authorised signatory of M/s."Softrich Textstyles" Clothings and it is a proprietary concern and as such the complaint cannot be filed under Section 142 of Negotiable Instruments Act. He further submitted that the second accused is also added as accused on his personal capacity. Since the first accused is a proprietor concern, the second accused cannot be added as accused.

3. The learned counsel for the respondent submitted that the complainant was issued cheque by the first accused on behalf of M/s."Softrich Textstyles" Clothings represented by its authorised signatory, namely the petitioner herein. Therefore the complaint is very much maintained as against both the accused persons.

4. It is seen that there are two accused in this complaint initiated by the respondent under Sections 138 and 142 of Negotiable Instruments Act. Admittedly the cheque has been issued by the first accused and the second accused is the authorised signatory to the first accused. On perusal of the documents, it is seen that M/s."Softrich Textstyles" Clothings is a proprietary concern and as such the complaint is not maintainable under Section 142 of Negotiable Instruments Act. It is relevant to extract Section 142 of Negotiable Instruments Act as follows:

"142.Cognizance of offences

(a)no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b)such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138;

(c)no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.]"

5. The first accused is a company and the offence under Section 142 of Negotiable Instruments Act is maintainable. In the case on hand, the first accused is a proprietary concern and as such the second accused cannot be prosecuted on his personal capacity. Therefore, the complaint is not maintainable as against the second accused and it cannot be sustained as against the petitioner / the second accused. As such, this Criminal Original Petition deserves to be allowed.

6. It is made clear that the cheque was issued by the first accused in the complaint as such the complaint is very much maintainable as against the first accused, namely M/s."Softrich Textstyles" Clothings represented by its authorised signatory Mr.K.Balamurugan. On perusal of documents, it is also seen that the first accused is a proprietary concern and Mr.K.Balamurugan is the sole proprietor. Therefore the trial court is directed to proceed against the first accused and complete the trial proceedings in S.T.C.No.385 of 2017 within a period of three months from the date of receipt of a copy of this Order.

7. With the above direction, this Criminal Original Petition is allowed and the proceedings in S.T.C.No.385 of 2017 on the

file of the learned Judicial Magistrate No.IV, Salem is quashed as against the petitioner alone. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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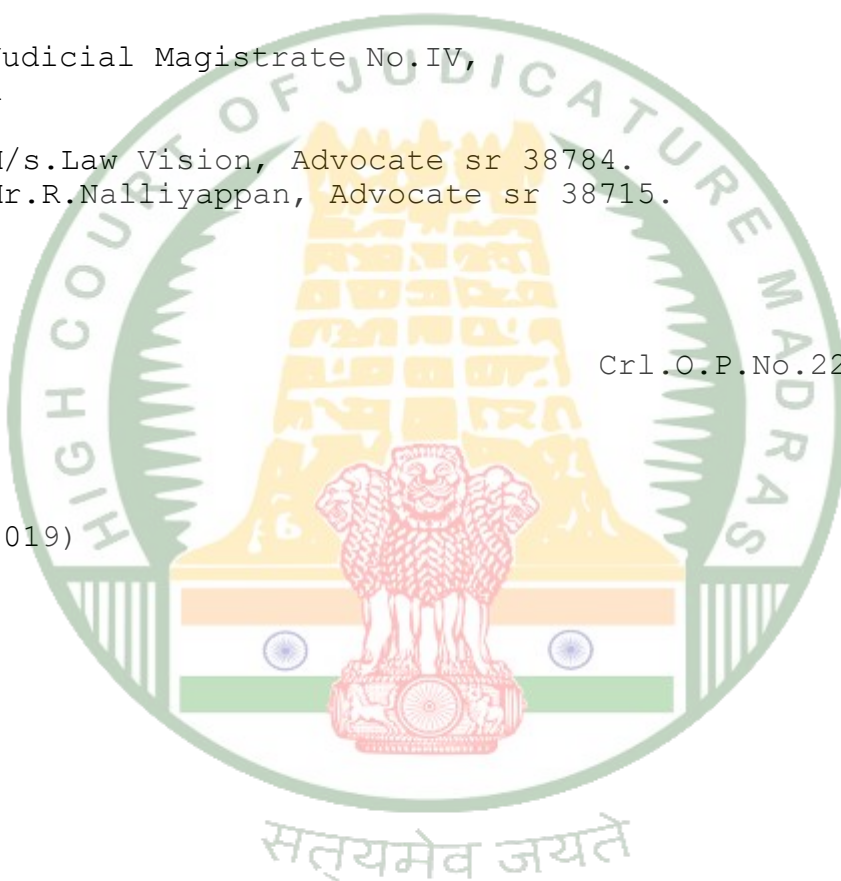
The Judicial Magistrate No.IV,
Salem

+1 CC to M/s.Law Vision, Advocate sr 38784.

+1 CC to Mr.R.Nalliyappan, Advocate sr 38715.

Crl.O.P.No.22331 of 2018

RK(CO)
SP(31/05/2019)



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