

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2020

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.1438 of 2020

and

Crl.M.P.No.862 of 2020

Ganesh Kumar,
S/o.Veluchamy,
Proprietor,
M/s.Varshini Equipments,
Regd Off.No.13/1C,
Eachanari to Madukkarai Road,
Madukkarai Post,
Coimbatore - 641105.

...Petitioner

Vs.

Boopalan,
Proprietor M/s.Bharani Blue Metals,
Having Office at S.F.277/182,
Chetteri Village, Vellore District

Rep. by his Power of Attorney,
Madhan S/o.A.M.Srinivasalu,
Supervisor M/s.Bharani Blue Metals,
Having office at S.F.277/182,
Chetteri Village, Vellore District.

...Respondent

Common Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to call for the records pertaining to the proceeding in C.C.No.603 of 2019 on the file of the Judicial Magistrate No.1 at Coimbatore and quash the same.

For Petitioner : Mr. Abrar Mohamed Abdullah

For Respondent : No Appearance

O R D E R

This petition has been filed to quash the proceedings in C.C.No.603 of 2019 on the file of the Judicial Magistrate No.I, Coimbatore.

2. The learned counsel for the petitioner would submit that the petitioner is a sole accused in the complaint lodged by the respondent for the offence punishable under Section 138 of Negotiable Instruments Act.

3. According to the Petitioner/accused, M/s.Varshini Equipments had a business transaction with the defacto complainant/respondent namely M/s.Bharani Blue Metals at Coimbatore in respect of purchase of goods for credit from the respondent and issued a cheque for a sum of Rs.8,15,000/-. The said cheques were presented for collection and the same was dishonoured and returned as "account closed". After issuance of statutory notice, the respondent lodged a complaint for the offence under Section 138 and 141 of the Negotiable Instruments Act as against the petitioner/accused. He further submitted that the petitioner neither proprietor of M/s.Varshini Equipments nor partner of M/s.Varshini Equipments.

4. Admittedly, M/s.Varshini Equipments is a proprietorship and it is owned by one Uma Maheswari. Though she happens to be the wife of the petitioner herein, the petitioner did not issue any cheque to the respondent and admittedly, the cheque issued by the proprietorix Mrs.Uma Maheswari of M/s.Varshini Equipments. He further submitted that after receipt of statutory notice from the respondent dated 03.01.2019, he categorically explained by a reply dated 10.01.2019 that the petitioner is not a proprietor of M/s.Varshini Equipments and the respondent might have dealt with M/s.Varshini Equipments and it's proprietorix. The reply notice was also duly received by the respondent and thereafter, no re-jointer was sent by the respondent herein. Therefore, the petitioner is no way connected to M/s.Varshini Equipments and he is not at all liable to be punished for the offence under Section 138 & 141 of the Negotiable Instruments Act.

5. Though notice served to the respondent herein and his name is printed in the cause list, no one is appeared on behalf of the respondent either by person or through a pleader.

6. Heard the learned counsel for the petitioner and perused the materials available on record.

7. The petitioner is a sole accused in the complaint lodged by the respondent for the offence punishable under Section 138 and 141 of the Negotiable Instruments Act. The respondent lodged a complaint alleging that the complainant had approached the accused for supplying of machineries for new M-sand Unit at Chetteri, Vellore District. Based on the request of the complainant, the accused had agreed to supply the

machineries with free installation charges. Accordingly, the accused placed invoice with the complainant for supply of machineries for M-Sand unit. When the accused supplied machineries to the complainant as per the invoices, issued eight cheques. On receipt of the same, the complainant presented the cheques for collection and the same were dishonoured and returned as "account closed". After causing statutory notice, the respondent lodged a complaint for the offence punishable under Section 138 and 141 of the Negotiable Instruments Act as against the petitioner. The learned counsel for the petitioner would submit that the petitioner is not a signatory and the petitioner is not a proprietor of M/s.Varshini Equipments.

8. On perusal of a certificate of registration to the Commercial Tax Department and M/s.Varshini Equipments owned by the proprietor one Uma Maheswari. Though, she happens to be the wife of the petitioner herein, the petitioner is nothing to do with M/s.Varshini Equipments, since it is owned by Uma Maheswari.

9. On perusal of the alleged cheques were signed and issued by proprietor of M/s.Varshini Equipments namely Uma Maheswari, the respondent proceeded the complaint as against the petitioner as if he is the proprietor of M/s.Varshini Equipments and issued statutory notice against the petitioner dated 03.01.2019. On receipt of the same, the petitioner issued reply notice dated 10.01.2019 and he categorically stated that he is not a proprietor of the concern M/s.Varshini Equipments. Further stated that the respondents might have dealt with M/s.Varshini Equipments and the petitioner has no responsibility to resume any of the respondent's business, loss or what so ever.

10. Therefore, the petitioner is not liable to be prosecuted for the offence punishable under Section 138 and 141 of the Negotiable Instruments Act, since the petitioner neither proprietor nor partner of M/s.Varshini Equipments. Therefore, the complaint cannot be sustained as against the petitioner and it is liable to be quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

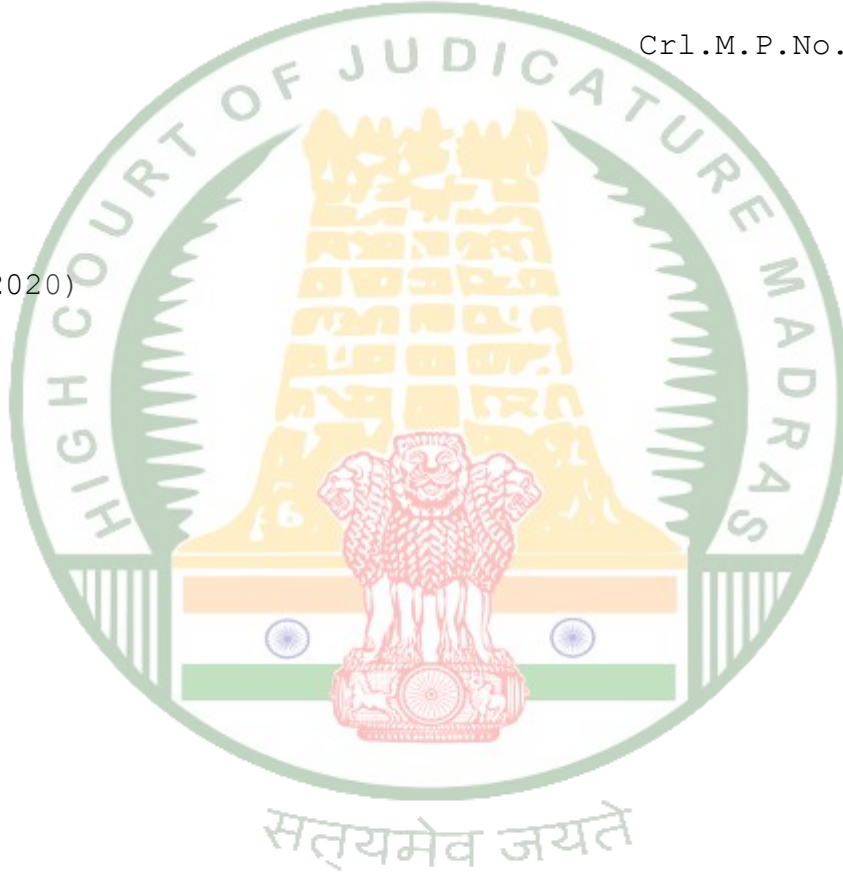
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To

The Judicial Magistrate No.I,
Coimbatore.

CrI.O.P.No.1438 of 2020
and
CrI.M.P.No.862 of 2020

RSV(CO)
RN(03/11/2020)



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