



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.Nos.4922, 4925, 4927, 4928, 4930, 5679, 8868, 11179,
16361, 20354 and 20356 of 2018 & 2360 of 2019
and

Crl.M.P.Nos.2453, 2454, 2459, 2460, 2463, 2464, 2465, 2466,
2469, 2470, 2850, 2851, 4585, 4586, 5756, 5757, 8427 and 8428
of 2018 & 1532 of 2019

Shanmugathammal ..Petitioner in All OPs
Vs.

M.Mohammed Siraj ..Respondent in
Crl.OP No.4922 of 2018

Mrs.Mahmudha Thilrusmazher Ali ..Respondent in
Rep by Power Agent A.Sheik Abdullah Crl.OP No.4925 of 2018

A.S.Mufeeth Ahamed ..Respondent in Crl.OP.No.4927 of 2018

Mr.L.Riyaz Ahmed ..Respondent in Crl.OP.No.4928 of 2018

Mr.B.Farmanullah ..Respondent in
Rep by Power Agent L.Riyas Ahmed Crl.OP.No.4930 of 2018

S.Mumtaj Begum ..Respondent in Crl.OP.No.5679 of 2018
Rep by his son Power Agent A.S.Mufeeth Ahamed

A.S.Mufeeth Ahamed ..Respondent in Crl.OP.No.8868 of 2018

A.S.Mufeeth Ahamed ..Respondent in Crl.OP.No.11179 of 2018

K.S.Shathik ..Respondent in Crl.OP.No.16361 of 2018

K.S.Shathik ..Respondent in Crl.OP.No.20354 of 2018
Rep by Power Agent A.s.Mufeeth Ahmed

K.S.Shathik ..Respondent in Crl.OP.No.20356 of 2018
Rep by Power Agent A.s.Mufeeth Ahmed

K.S.Shathik ..Respondent in Crl.OP.No.2360 of 2019
Rep by Power Agent A.s.Mufeeth Ahmed



PRAYER:

Crl.OP.No.4922 of 2018 : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the entire records in pursuant to the criminal proceedings in S.T.C.No.610 of 2017 pending on the file of the Court of Judicial Magistrate, Erode/Fast Track Court-1 and quash the same.

CRL OP No.4925 of 2018 : To call for the entire records in pursuant to the criminal proceedings in STC No.611 of 2017 pending on the file of Court of Judicial Magistrate, Erode/Fast Track Court-1 and quash the same

CRL OP No.4927 of 2018 : To call for the entire records in pursuant to the criminal proceedings in S.T.C.No.612 of 2017 pending on the file of Court of Judicial Magistrate, Erode/Fast Track Court-1 and quash the same.

CRL OP No.4928 of 2018 : To call for the entire records in pursuant to the criminal proceedings in S.T.C.No.613 of 2017 pending on the file of Court of Judicial Magistrate, Erode/Fast Track Court-1 and quash the same.

CRL OP No.4930 of 2018 : To call for the entire records in pursuant to the criminal proceedings in S.T.C.No.614 of 2017 pending on the file of Court of Judicial Magistrate, Erode/Fast Track Court-1 and quash the same

CRL OP No.5679 of 2018 : To call for the entire records in pursuant to the criminal proceedings in STC No.37 of 2018 pending on the file of Court of Judicial Magistrate, Erode/Fast Track Court-II and quash the same

CRL OP No.8868 of 2018 : To call for the entire records in pursuant to the criminal proceedings in S.T.C.No.79 of 2018 pending on the file of Court of Judicial Magistrate, Erode/Fast Track Court-I and quash the same.

CRL OP No.11179 of 2018 : call for the entire records in pursuant to the criminal proceedings in S.T.C.No.116 of 2018 pending on the file of Court of Judicial Magistrate/Fast Track Court-1, Erode and quash the same.

CRL OP No.16361 of 2018 : To call for the entire records in pursuant to the criminal proceedings in S.T.C.No.275 of 2018 pending on the file of Court of Judicial Magistrate/Fast Track Court-II, Erode and quash the same.

CRL OP No.20354 of 2018 : To call for the entire records in pursuant to the Criminal proceedings in STC.No.387 of 2018 pending on the file of Court of Judicial Magistrate Fast Track



Court-II, Erode and quash the same.

CRL OP No.20356 of 2018 : To call for the entire records in pursuant to the criminal proceedings in S.T.C.No. 420 of 2018 pending on the file of court of Judicial Magistrate/Fast Track Court-II, Erode and quash the same.

CRL OP No.2360 of 2019 : To call for the entire records in pursuant to the criminal proceedings in STC No.680 of 2018 pending on the file of court of Judicial Magistrate/Fast Track Court-II, Erode and quash the same.

For Petitioner : Mr.T.P.Prabakaran in all Crl OPs

For Respondent : Mr.M.Guruprasad in all Crl OPs

C O M M O N O R D E R

The petitioner has filed these petitions to call for the entire records in pursuant to the criminal proceedings in S.T.C.Nos.610/2017, 116/2018, 614/2017, 613/2017, 612/2017, 611/2017, 79/2018 pending on the file of the Court of Judicial Magistrate, Erode/Fast Track Court-1 and S.T.C.Nos.37/2018, 275/2018, 420/2018, 387/2018, 680/2018, on the file of the Court of Judicial Magistrate, Erode/Fast Track Court-II, and quash the same.

2. The case of the petitioner is that she is arrayed as one of the accused in cases pending before the Court of Judicial Magistrate, Erode/Fast Track Court-1 and before the Court of Judicial Magistrate, Erode/Fast Track Court-II, for the offences under Section 138, 141 and 142 of the Negotiable Instrument Act, 1881. The accused Company is running a leather business in the name and style of M/s.Nag India Pvt Ltd., As per the request of the petitioner Company, the complainant Company agreed to supply the 'Wet Blue Cow Hides' and supplied the same. During the course of business, the accused Company was due and payable to the respondent Company for the supply made. For which, the 2nd accused had issued various cheques on different dates for discharge of the debts arising out of supply. When the said cheques were present in bank, it was returned and dishonoured by the complainant's Bank with an endorsement of 'Payment Stopped by the Drawers'. Therefore, the respondent has filed the complaints, pending on the file of the Court of Judicial Magistrate, Erode.

3. It is further alleged by the petitioner that the respondent has admittedly not issued any legal notice to the



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accused as prescribed under the provisions of Negotiable Instruments Act, however, in the complaint, it is stated that a legal notice was duly served to all the Directors including the petitioner herein. Therefore, the complaint filed under Section 138 Negotiable Instrument Act, is legally unsustainable. Hence, challenging the said complaint, the present petition is filed.

4. The learned counsel appearing for the petitioner submitted that the accused Company had issued a letter to the respondent through their counsel on 29.07.2017, stating that vide order dated 10.07.2017, issued by National Company Law Tribunal, Chennai Bench, the Corporate Insolvency Resolution Process against the accused Company has commenced and hence the 2nd accused was unable to honor the post dated cheques in favour of the respondent Company. Further, the complainant has filed the complaint on 21.12.2017, before that on 10.07.2017, the NCLT, Chennai, had initiated insolvency proceedings against the accused Company. On 24.07.2017, a public announcement was issued by the Insolvency Resolution Professional, requesting all the financial creditors of the accused Company to submit their proof of claims and further on the same day, the accused Company informed the respondent about the commencement of Corporate Insolvency Resolution Process and requested not to present the cheques. In spite of that the complainant has presented the cheques for collection and filed the complaint, as if the accused company failed to settle their debts. In view of the commencement of insolvency proceedings against the accused Company, the complainant is not legally entitled to file a complaint before the Trial Court.

5. The learned counsel appearing for the petitioner further submitted that apart from the above said facts, the petitioner is the wife of the 2nd accused / Managing Director of the accused Company and she is only a name lending Director and never involved in the day to day affairs of the accused Company and therefore, the complaint against the petitioner is not maintainable and prays for allowing of the said petition.

6. The learned counsel appearing for the respondent also fairly conceded the submissions made by the learned counsel for the petitioner and has no serious objection to quash the complaint against the petitioner herein.

7. This Court has considered the rival submissions and also perused the materials available on record.

8. A perusal of materials reveal that the petitioner is the wife of the 2nd accused / Managing Director of the accused Company and she is only a name lending Director and not actively participated in the day-to-day affairs of the accused Company



and further there is no specific allegation has been made in the complaint implicating the petitioner in the offence. That being the case, the complaint u/s. 138 of the Negotiable Instrument Act, is wholly misconceived and cannot be sustained. Hence this Court is inclined to quash the complaint as against the petitioner in the above petitions.

9. For the reasons aforesaid, these Criminal Original Petitions are allowed and S.T.C.Nos.610/2017, 116/2018, 614/2017, 613/2017, 612/2017, 611/2017, 79/2018 pending on the file of the Court of Judicial Magistrate, Erode/Fast Track Court-1 and S.T.C.Nos.37/2018, 275/2018, 420/2018, 387/2018, 680/2018, on the file of the Court of Judicial Magistrate, Erode/Fast Track Court-II, are quashed. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Erode/Fast Track Court-1.
2. The Public Prosecutor,
High Court, Madras.
3. The Judicial Magistrate,
Erode / Fast Track Court-II

+1cc to the Government Pleader, S.R.No.46541

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SVI (CO)
RGA(06/10/2021) (20/10/2021)