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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CrI. O.P. Nos.5682, 17975, 25572 & 25584 of 2018
and
CrI.M.P.Nos.2856, 2857,9383, 9384,14609, 14610,
14614 & 14615 of 2018

CrI.O.P.No.5682 of 2018

Shanmugathammal,
W/o. S.Chokalingam Pillai

...Petitioner/5th Accused

Versus

A.S.Mufeeth Ahamed,
Proprietor of M/s.S.M.Leathers,
S/o. K.A.Shathik
C/o. Erode Sathick Tannery,
Maravapalayam,
R.N.Pudur Post,
Erode - 638 005.

...Respondent/Complainant

PRAYER:Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the entire records in pursuant to the criminal proceedings in S.T.C.No.23 of 2018 pending on the file of Court of Judicial Magistrate, Erode / Fast Track Court -1 and quash the same.

CrI.O.P.No.17975 of 2018

Shanmugathammal,
W/o. S.Chokalingam Pillai,
Director :- M/s. Nag India Ltd.

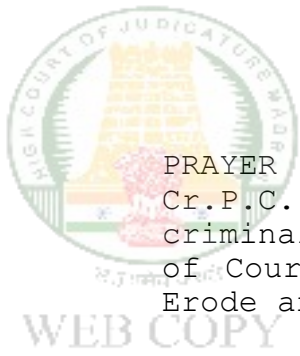
...Petitioner/4th Accused

Versus

K.A. Shathik,
Proprietor : M/s.Taj Leathers

Represented by his son and
power agent :-
A.S.Mufeeth Ahamed,
S/o. K.A.Shathik
No.270, C/o. Erode Sathick Tannery,
Maravapalayam,R.N.Pudur Post,
Erode - 638 005.

...Respondent/Complainant



PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the entire records in pursuant to the criminal proceedings in S.T.C.No.344 of 2018 pending on the file of Court of Judicial Magistrate, Erode / Fast Track Court -II, Erode and quash the same.

Cr1.O.P.No.25572 of 2018

Shanmugathammal,
W/o. S.Chokalingam Pillai,
Director :- M/s. Nag India Ltd. ...Petitioner/4th Accused

Versus

K.A. Shathik,
Proprietor : M/s.Taj Leathers

Represented by his son and
power agent :-
A.S.Mufeeth Ahamed,
S/o. K.A.Shathik
No.270, C/o. Erode Sathick Tannery,
Maravapalayam,
R.N.Pudur Post,
Erode - 638 005. ...Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the entire records in pursuant to the criminal proceedings in S.T.C.No.551 of 2018 pending on the file of Court of Judicial Magistrate, Erode / Fast Track Court -II, Erode and quash the same.

Cr1.O.P.No.25584 of 2018

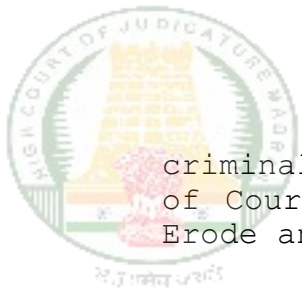
Shanmugathammal,
W/o. S.Chokalingam Pillai,
Director :- M/s. Nag India Ltd. ...Petitioner/4th Accused

Versus

K.A. Shathik,
Proprietor : M/s.Taj Leathers

Represented by his son and
power agent :-
A.S.Mufeeth Ahamed,
S/o. K.A.Shathik
No.270, C/o. Erode Sathick Tannery,
Maravapalayam,
R.N.Pudur Post, Erode - 638 005. ...Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the entire records in pursuant to the



criminal proceedings in S.T.C.No.496 of 2018 pending on the file of Court of Judicial Magistrate, Erode / Fast Track Court -II, Erode and quash the same.

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For Petitioner in
all CrI.O.P.s : Mr.T.P.Prabakaran

For Respondent in
all CrI.O.P.s : Mr.M.Guruprasad

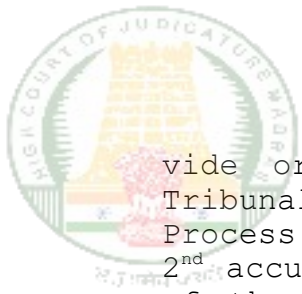
C O M M O N O R D E R

These Criminal Original Petitions have been filed to quash the criminal proceedings in S.T.C.No. 23, 344, 551 and 496 of 2018 on the file of Judicial Magistrate, Erode/Fast Track Court-I and Fast Track Court-II.

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 presented in the bank, it was returned and the same were dishonoured by the complainant's Bank with an endorsement of 'Payment Stopped by the Drawers'. Therefore, the respondent has filed the complaints before 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 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 of Negotiable Instrument Act, is legally unsustainable. Hence, challenging the said complaints, the present petitions have been filed by the petitioner.

4. The learned counsel appearing for the petitioner would submit 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 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 would further submit 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. Therefore, the complaint against the petitioner is not maintainable and prays for allowing the present petitions.

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

7.Heard rival submissions and also perused the materials available on record.

8.A perusal of materials reveals 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 Further, there is no specific allegation was made in the complaint implicating the petitioner as the offender. That being the case, the complaint under Sec.138 of the Negotiable Instrument Act, is wholly misconceived and the same cannot be sustained. Hence, this Court is inclined to quash the complaints as against the petitioner in the above petitions.

9. For the reasons aforesaid, these Criminal Original Petitions are allowed and the criminal proceedings in S.T.C.No. 23, 344, 551 and 496 of 2018 on the file of Judicial



Magistrate / Fast Track Court-I and Fast Track Court-II, Erode are quashed against petitioner alone. Consequently, connected Criminal Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rpp/gd

To

1. The Judicial Magistrate/Fast Track Court-I,
Erode.
2. Do Thro Chief Judicial Magistrate,
Erode.
3. The Judicial Magistrate/Fast Track Court-II,
Erode.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.260

+1cc to Mr.T.P.Prabakaran, Advocate, S.R.No.145

CrI. O.P. Nos.5682, 17975, 25572
& 25584 of 2018
and
CrI.M.P.Nos. 2856, 2857, 9383, 9384,
14609, 14610, 14614 & 14615 of 2018

PVS (CO)
RGA (27/01/2022)