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Crl.O.P.Nos.8944 & 9058 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :01.07.2022

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THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P.Nos.8944 & 9058 of 2022
and Crl.M.P.Nos.5209, 5210, 5267 & 5269 of 2022

M.Gopinath

... Petitioner in both Crl.O.P.s

Vs.

1. M/s.Sripuram Devi Chits Private Limited,
Represented by its,
Managing Director,
R.Mohanraj.

2. M/s.STI Thirumagal Agencies,
Represented by its Proprietor,
M.Saravanan

3. M.Saravanan ... Respondents in Crl.O.P.No.8944 of 2022

1. M/s.Sripuram Devi Chits Private Limited,
Represented by its,
Managing Director,
R.Mohanraj.

2. M/s.Subashree Agencies,
Represented by its Proprietor,
M.Saravanan

3. M.Saravanan ... Respondents in Crl.O.P.No.9058 of 2022



Crl.O.P.Nos.8944 & 9058 of 2022

Prayer in Crl.O.P.No.8944 of 2022: Criminal Original Petition is filed under

Section 482 Cr.P.C., pleaded to call for the records and to quash the complaint in S.T.C.No.101 of 2021 pending on the file of the Judicial Magistrate (FTC), Vellore for the alleged offence under Section 138 of Negotiable Instruments Act, 1881.

Prayer in Crl.O.P.No.9058 of 2022: Criminal Original Petition is filed under

Section 482 Cr.P.C., pleaded to call for the records and to quash the complaint in S.T.C.No.103 of 2021 pending on the file of the Judicial Magistrate (FTC), Vellore for the alleged offence under Section 138 of Negotiable Instruments Act, 1881.

In both Crl.O.P.s.,

For Petitioner : Mr.Adithya Varadarajan

For R1 : Mr.B.K.Sreenivasan

COMMON ORDER

These Criminal Original Petitions have been filed seeking to quash the proceedings initiated under Section 138 of Negotiable Instruments Act.



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2. Learned counsel for the petitioner submitted that the petitioner is arrayed as A3 in both the complaints for issuance of cheque. The petitioner has been roped into this case, merely because he stood as guarantor in different transactions to the second accused, who issued the cheque on behalf of the first accused/R2.

3. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the first respondent.

4. On perusal of the complaint, it is seen that the cheque now in question was not issued by A3. He was implicated merely because he stood as a guarantor in some transactions in different capacity. Therefore, the prosecution under Section 138 of Negotiable Instruments Act is not maintainable as against the present petitioner/A3. To maintain a prosecution for an offence under Section 138 of Negotiable Instruments Act, it must be shown that the cheque was drawn by the accused on an account maintained by him with a bank for payment of an amount to the complainant, which was dishonoured for any of the reasons stated in 138 of Negotiable Instruments Act.



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N. SATHISH KUMAR, J.

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5. In such view of the matter, this Court is of the view that when the cheque is not issued by the petitioner/A3 and it was issued only by A2 on behalf of A1, the prosecution as against the petitioner is not maintainable. Thereby, the proceedings initiated in the complaints before the Judicial Magistrate (FTC), Vellore in S.T.C.Nos.101 & 103 of 2021 against the petitioner/A3 alone is quashed and the trial Court shall proceed against A1 and A2 as per law and complete the trial expeditiously.

6. Accordingly, the Criminal Original Petitions are allowed. Consequently, the connected miscellaneous petitions are closed.

01.07.2022

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Speaking Order/Non-speaking Order

Index :Yes/No

Internet:Yes/No

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and

Crl.M.P.Nos.5209, 5210, 5267 & 5269 of 2022