



WEB COPY



Crl.O.P.No.8337 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2022

CORAM

THE HON'BLE MS. JUSTICE R.N.MANJULA

Crl.O.P.No.8337 of 2021
and
Crl.MP.No.5491 of 2021

1.V.Mohan Raj
Rep. By the Parter
M/s Ayngaran Tex.

2.V.Saravanakumar
Rep. by the partner
M/s Ayngaran Tex.

3.V.Sudha,
Rep. by the partner
M/s Ayngaran Tex.

4.V.Balaji,
Rep. by the partner
M/s Ayngaran Tex.

... Petitioners /Accused 2-5

Vs.

1.B.Srinivasan

...1st Respondent/ Complainant

2.M/S Ayngaran Tex,
Office at No.8/10
Society Street, Vennandur Post,
Rasipuram Taluk,
Namakkal-637505.

... Respondent/1st Accused



CrI.O.P.No.8337 of 2021

Prayer:- This Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records in the order dated 11.03.2021, passed by the learned Judicial Magistrate (Fast Track Court No.II) at Erode made in C.M.P.No.1478 of 2020 in S.T.C.No.729 of 2017, and set aside the same.

For Petitioners : Mr.B.Jawahar

Respondents : served and no appearance

ORDER

This Criminal Original Petition has been preferred challenging the order of the learned Judicial Magistrate (Fast Track Court No.II) at Erode made in C.M.P.No.1478 of 2020 in S.T.C.No.729 of 2017 dated 11.03.2021.

2. The petitioners are accused 2 to 5 in STC.No.729 of 2017 on the file of the Judicial Magistrate (Fast Track Court No.II) at Erode. The petition in CMP.No.14781 of 2020 was filed by the first respondent herein/complainant to amend the particulars of the complainant and the accused in the complaint in STC.No.729 of 2017 filed against the petitioners/accused 2 to 5 and the second respondent herein for the offence under Section 138 of Negotiable Instruments Act, 1881. The said petition was allowed by the Court below by the impugned order. Aggrieved over that, this criminal original petition has been preferred.



3. The learned counsel for the petitioners submitted that the first petitioner had issued the cheque in question in the name of the Company namely M/s.Sri Srinivasa Textiles; the first respondent/complainant having omitted to issue the statutory notice in the name of the company had impleaded the company as a party to the criminal proceedings initiated under Section 138 of Negotiable Instruments Act, had chosen to file the petition only to cure the material defect and that has been allowed by the Court below; if the impugned order of the learned Judicial Magistrate in allowing the petition for amendment is not set aside, the entire defence of the petitioners will be lost and hence, the criminal original petition may be allowed.

4. Though the notice was served and the names of the respondents are printed in the cause list, the respondents did not make appearance before the Court.

5. On perusal of the records, it is seen that originally the complaint was given only against the petitioners in their individual capacity.

6. It is submitted by the learned counsel for the petitioners that the first respondent/complainant had filed the amendment petition subsequent to the



cross examination of PW1 on the aspect of not impleading the company as a party.

7. It is also seen that the statutory notice is also said to have been not sent in the name of the company. During the cross examination of PW1, he admitted that the statutory notice was sent only in the personal names of the petitioners. So, it is clear that the first respondent/complainant had chosen to file the amendment petition just to cure the material defect, which would have all the probabilities neutralise the defence of the petitioners. The learned Judicial Magistrate, before allowing the amendment petition, ought to have analysed as to whether the amendment would change the entire character of the complaint and whether it would cause gross injustice to the petitioners.

8. Even if the amendment is allowed to be carried out, that will not cure the defect of not sending the statutory notice to the company by its name. In fact the cheque was issued in the name of the company and not in the name of the complainant. It is apparent from the records that the first respondent had filed the amendment petition only in order to stultify the admission given during the cross examination of the complainant. Such a prayer sought through the amendment petition ought not to have been granted. In view of the above



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stated reasons, I feel that the impugned order of the learned Judicial Magistrate (Fast Track Court No.II) at Erode is liable to be set aside.

9. In the result, this Criminal Original Petition is **allowed**. The order of the learned Judicial Magistrate (Fast Track Court No.II) at Erode, made C.M.P.No.1478 of 2020 in S.T.C.No.729 of 2017 dated 11.03.2021 is set aside. consequently, connected miscellaneous petition is also closed.

29.09.2022

Speaking/Non-speaking
Index : Yes/No
RS/jrs

To

The Judicial Magistrate (FTC-II),
Erode.

RS/JRS



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R.N.MANJULA, J.

RS/jrs

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