



Crl.O.P.No.11343 of 2019  
and  
Crl.M.P.No.5786 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :28.10.2022

Pronounced on :03.11.2022

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

**Crl.O.P.No.11343 of 2019**

**and**

**Crl.M.P.No.5786 of 2019**

1.P.Dinesh Kumar

2.Periyasamy

.. Petitioners/Accused No.2 & 3

/versus/

M/s Sriram Enterprises,

Rep.by its Managing Partner,

S.G.Natesan through his Power Agent,

K.Srinivasan,

S/o Krishnamoorthy,

3-193 Pudukkottai Extention,

Pottirettipatti,

Namakkal Taluk & District.

.. Respondent/complainant

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records in C.C.No.264 of 2017 pending before the Judicial Magistrate No.1, Namakkal, Namakkal District and quash the same.

For Petitioner :Mr.R.Anbukarasu

For Respondent :Mr.S.Lakshmanasamy

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## ORDER

This Criminal Original Petition is filed by the accused 1 and 2, who face criminal prosecution for the offence under Section 138 of the Negotiable Instruments Act, 1881 in connection with cheques dated 01.04.2017 and 24.04.2017 drawn in favour of the complainant for Rs.1,00,000/- and Rs.75,000/- respectively signed and issued by the 2<sup>nd</sup> accused as Managing Partner of the Partnership Firm by name “ M/s Sri Lakshmi Feeds”.

2. The case of the complainant is that, the complainant's firm namely, “M/s Sriram Enterprises” supplied Animal Husbandry Medicines to the Poultry of the petitioner's Firm and towards payment of cost, the cheques dated 01.04.2017, 24.04.2017 and 20.05.2017 drawn in favour of the complainant for Rs.1,00,000/-, Rs.75,000/- and Rs.72,280/- respectively were issued by the first petitioner, the Managing Partner. The said cheques were presented for collection and the cheques bearing Nos.000267 and 000310 were returned with an endorsement “funds insufficient” and the



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cheque bearing No.032160 was returned with an endorsement “account blocked”. The complaint was lodged and the same was taken on file in C.C.No.264 of 2017 by the Judicial Magistrate No.1, Namakkal and summons were issued to the accused persons.

3. On receipt of the summons, the petition to quash is filed on the ground that, the Partnership Firm M/s Sri Lakshmi Feeds was incorporated and consisting of Balasubramaniam, Babu Saravanan, S.P.Kumaravel, K.Ramesh, Kanagaraj and P.Dinesh Kumar. The firm was registered in No.935 of 2014 before the Registrar of Firms on 01.11.2014. One Mr.C.Periyasamy, was inducted into the partnership firm on 31.08.2015. Subsequently, on 01.09.2015, except Periyasamy and his son Dinesh Kumar, rest of the partners retired from the firm. Till 11.03.2017 the firm was run by its partners Periyasamy and Dinesh Kumar. After that date, the firm was reconstituted, Savitha and her husband Chetan Kumar were induced as partners, Periyasamy and Dinesh Kumar were retired. The



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creditors of the firm were informed about the retirement deed dated 15.03.2017 and the reconstitution deed dated 16.03.2017, wherein it has been agreed by the parties that all the assets and liabilities of the firm henceforth be taken over by the new partners namely, Savitha and Chetan Kumar. Cibi Chakravarthy who is one of the complainants and who is one of the witnesses to the deeds of retirement and reconstitution knows about this fact.

4. As per the Form-A submitted to the Registrar of Firms on 23.03.2017, the date of reconstitution is mentioned as 15.03.2017. Therefore, the erstwhile partners of the firm Mr.Periyasamy and his son Mr.Dinesh Kumar have no control over the firm M/s Sri Lakshmi Feeds, after 15.03.2017 and not responsible for the liabilities of the firm.

5. The cheques which are the subject matter of the complaint and few more cheques were signed and kept blank, when the petitioners were



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maintaining the account of the partnership firm as its Managing Partner. When they retired from the partnership firm on 15.03.2017, due to inadvertence, they did not destroy those cheques. However, informed the Bank not to entertain cheques issued from the account maintained by him as Managing Partner of the firm in which he was the Managing Partner till 14.03.2017. The new partners had misused the blank signed cheques and through the complainant and others attempted to withdraw the money lying in the account of the petitioner which was freezed on 28.03.2017 on the instruction of the petitioners. Further, Periyasamy has filed a suit for declaration and injunction in O.S.No.93 of 2017 on the file of the Sub Court, Namakkal and interim injunction is granted on 28.03.2017 restraining the respondents/creditors (the complainant is one of the respondent) from claiming any dues of the partnership firm from Periyasamy who retired on 15.03.2017. Also through paper advertisement dated 24.03.2017, the retirement from the partnership firm been made known to all general public. Therefore, the private complaint is a malicious prosecution initiated with full



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knowledge of the retirement and reconstitution of the partnership firm and the interim restrain order. Hence, the petitioners seek to quash of the complaint without undergoing the process of trial.

6. It is contended by the learned counsel appearing for the defacto complainant/respondent that post-dated cheque was issued to discharge the liability and after issuing the post-dated cheques, the petitioners appear to have retired from the Partnership Firm. However, since the post-dated cheques were issued prior to the retirement and signed as Managing Partner of the Partnership Firm, the first petitioner being the Managing Partner and signatory to the cheque and the second petitioner is the Partner of the Partnership Firm. Both were actively participated in the affairs of the partnership firm. Therefore, they are liable to be prosecuted for issuing the cheque.

7. From the records, it is clear that the cheques which are the subject matter of the complaint in C.C.No.264 of 2017 dated 02.08.2017 is



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subsequent to the retirement of the petitioners from the partnership firm namely, M/s Sri Lakshmi Feeds. On the petitioners retired from the firm on 15.03.2017, the firm has been reconstituted with new partners and the same has been duly intimated to the General Public by way of Paper publication dated 24.03.2017. The suit in O.S.No.93 of 2017 on the file of the Sub Court, Namakkal filed on 28.03.2017 as against 42 defendants, in which the complainant herein is shown as 24<sup>th</sup> respondent. In this suit, an interim order restraining the defendants from initiating action for the liability of the partnership firm been issued on 28.03.2017. Whereas, the present complaint has been filed thereafter on 02.08.2017, based on the cheques apparently been issued subsequent to the retirement. Hence, the said prosecution is *per se* not maintainable. Since to attract Section 138 of the Negotiable Instruments Act, 1881, the said cheques should have been issued by the drawer from the account maintained by him. Whereas after retirement from the partnership firm M/s Sri Lakshmi Feeds, the petitioners have given a paper publication dated 24.03.2017 intimating the general public about their

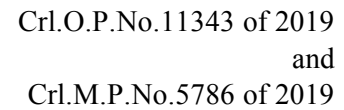


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retirement. More particularly to the statutory notice issued by the complainant, reply notice dated 19.07.2017 issued by the petitioners placing the fact that the cheques are not issued for enforcement of debt and he is not liable. Despite that, the complaint dated 02.08.2017 has been filed, knowing well that the cheques were subsequent to the retirement of the signatory of the cheques and the first petitioner has no authority to sign the cheque on behalf of the Firm or to represent the partnership firm.

8. Section 138 of the Negotiable Instruments Act, 1881 permits the complaint only in case of cheques issued by a person from the account maintained by him. In the case in hand, the subject cheques dated 01.04.2017, 24.04.2017 and 20.05.2017 apparently not issued by the first petitioner from the account maintained by him. Therefore, offence under Section 138 of the Negotiable Instruments Act, 1881 is not attracted. If at all the subject cheques were issued with a criminal intention to cheat the complainant, the remedy is open to the complainant to resort to file a



03.11.2022

Index:yes/no  
speaking order/non speaking order  
ari  
To :  
The Judicial Magistrate No.1, Namakkal.

**DR.G.JAYACHANDRAN,J.**



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Delivery Order made in  
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