



CRL.O.P.No.18649 / 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2022

CORAM

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

Crl.O.P.No.18649 of 2019  
and Crl.M.P. No.9468 of 2019

Naveen

... Petitioner

vs.

D.Thiruneelaganda Senthil Kumaran

... Respondent

Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining in the C.C. No.145 of 2017 on the file of the Judicial Magistrate, Omalur, Salem District and quash the same.

For Petitioner : Mr.R.Muruga Bharathi

For Respondent : Mr.P.Jagadeesan



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### ORDER

This Criminal Original Petition has been filed to call for the records pertaining in C.C. No.145 of 2017 on the file of the Judicial Magistrate, Omalur, Salem District and quash the same.

2. The petitioner is the Managing Director of the company called as Dhanya TMT (P) Ltd., who is the sole accused in the complaint given by the respondent for the offences under Section 138 and 142 of Negotiable Instruments Act.

3. The learned counsel for the petitioner submitted that the impugned cheques bearing Cheque Nos.165427, 165428 drawn from Andhra Bank, Kuppam Branch, Chittoor district were issued by the petitioner's company on 24.02.2017 for a sum of Rs.4,00,000/- to the respondent; the said cheques have not been issued in the personal capacity of the petitioner; without impleading the company, the respondent had impleaded the petitioner alone and had initiated action under Section 138 and 142 of Negotiable Instruments Act which is in violation of Section 141 Negotiable Instruments Act; hence, the proceedings against the petitioner should be



quashed.

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4. On persual of the records it is seen that the petitioner is the Managing Director of the Company and the impugned cheques have been issued by the petitioner in his official capacity as Signatory of the company by name Dhanya TMT (P) Ltd. But in the complaint, the respondent has stated as though the petitioner had approached the respondent in his personal capacity and availed loan for a sum of Rs.4,00,000/- for which he had issued the cheques. In fact the said cheques were issued on behalf of the company. But without impleading the company as a party to the proceedings, only the petitioner has been impleaded as a sole accused.

5. A liability under Section 141 of Negotiable Instruments Act is vicariously fastened on a person connected with a company though the principal accused is the company itself. But without impleading the company who is liable to pay the cheque amount, its Directors cannot be impleaded as a party to the criminal proceedings in their individual capacity. Because the criminal liability on account of dishonour of the cheques primarily fall on the drawer of the cheque. In the case on the hand,



the cheques have been drawn only by the company. The petitioner being

the authorised signatory has signed the cheque on behalf of the company.

Since the primary liability is on the company, in compliance of Section 141 of Negotiable Instruments Act, the company should have been impleaded as the first accused. Since the company is a juristic person and it has to perform its affairs only with the persons in charge of the same, such persons should also be impleaded as parties by alleging how they are responsible to the affairs of the company.

6. Since the petitioner had not issued the cheque in his personal capacity but as the Director of the company, the company ought to have been added as the party to the proceedings. In the averments of the complaint it has not been stated that the cheque has been issued by the company. It is alleged that the petitioner had availed loan for his own business. In fact in the statement of the respondent, he has stated that the petitioner had availed the loan in order to meet out his family cum business expenses. But in reality, the cheques have been issued only by the company. So the respondent who had his dealings with the company had omitted to implead the company as a party but fixed the liability on the



petitioner in his personal capacity.

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7. It might be true that the petitioner is in charge of day-to-day affairs of the company and he was responsible for the conduct of the company. But without impleading the company, no criminal action can be sustained as against the petitioner in his individual capacity. The allegations made in the complaint is not clear so as to fasten the liability on the company who is the drawer of the impugned cheques. Though the Managing Director of the company should also be impleaded in his official capacity along with the company, the complaint cannot be maintainable if the Managing Director alone is impleaded by alleging that the loan was availed by the Managing Director for his family necessities, etc.

8. Since the allegations made in the complaint is totally contradictory to the details in the impugned cheque, I feel it is appropriate to invoke the powers of this Court under Section 482 Cr.P.C. to quash the proceedings.

9. Accordingly, this Criminal Original Petition is allowed and the



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proceedings in C.C. No.145 of 2017 on the file of Judicial Magistrate,

Omalur, Salem District is quashed. Connected miscellaneous petition is closed.

**06.12.2022**

Index : Yes/No

Internet : Yes/No

Speaking order / Non speaking order

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To:  
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The Judicial Magistrate,  
Omalur, Salem District.



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**R.N.MANJULA, J.**

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