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1 of 6

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P Nos.2459 and 2463 of 2023
and Crl.MP.Nos.14484 and 14486 fo 2023

Sugunabhai (a) Suguna
W/o.Ramasamy

.. Petitioner/Accused
in both Crl.OPs.

.Vs.

Mathiyazhagan
S/o.Pakkirisami

... Respondent/Complainant
in both Crl.OPs.

COMMON PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the complaint in STC.Nos.199 and 201 of 2022, on the file of the District Munsif cum Judicial Magistrate, Kattumanarkoil.

For Petitioner : Mr.K.Sasindran
(Both Crl.OPs)

For Respondent : Mr.B.Jagannath
(Both Crl.OPs)



COMMON ORDER

The issue involved in both these petitions are common and hence, they are taken up together, heard and disposed of through this common order.

2.These petitions have been filed to quash the proceedings in STC.No.199 of 2022 and STC No.201 of 2022, pending on the file of the District Munsif cum Judicial Magistrate, Kattumannarkovil.

3.The respondent had filed two complaints against the petitioner for offence u/s.138 of the Negotiable Instruments Act, 1881 based on two cheques which are said to have been issued by the petitioner in favour of the respondent for a liability which arose through a lease agreement entered into between the parties.

4.These quash petitions have been filed by the petitioner mainly on the ground that the cheque was issued by the Partnership Firm and the cheque was signed by the petitioner in her capacity as a partner and whereas the Partnership Firm has not been made as an accused and the petitioner has been shown as an accused in the complaint in her individual capacity.

5.Heard Mr.K.Sasindran, learned counsel for the petitioner and Mr.B.Jagannath, learned counsel for the respondent.

6.The issue involved in the present case is no longer res integra. The Apex



Court in **Aneeta Hada v. Godfather Travels and Tours** reported in **2012 5**

SCC 661 has categorically held that where a cheque has been given by a Company, the Company must be arrayed as an accused, failing which, the complaint itself is not maintainable. This is in view of Section 141 of the Negotiable Instruments Act, 1881. This concept has been applied even for a Partnership Firm and it has been held that a complaint is not maintainable without arraying the Firm as an accused. Useful reference can be made to the judgement of this Court in **N.Elangovan .Vs. C.Ganesan** reported in **(2014) 4 MLJ CrI.517**. Reference can also be made to the judgement of the Apex Court in **Dilip Hari Ramani .v. Bank of Baroda** reported in **2022 Vol 2 MWN (CrI.) DCC 51**.

7.In the instant case, the cheque was issued by the Firm and the petitioner had signed the cheque in her capacity as a partner and whereas the complaint has been filed by the respondent against the petitioner in her individual capacity. In view of the same, the complaint itself is not maintainable and the issue is squarely covered by the above judgements.

8.In the light of the above discussion, the complaints will have to be necessarily interfered by this Court and accordingly, the proceedings in STC.Nos.199 and 201 of 2022, pending on the file of the learned District Munsif cum Judicial Magistrate, Kattumanarkoil, is hereby quashed and both the criminal original petitions stand allowed. The order passed in these petitions will not come in the way of the respondent from prosecuting the other remedies available to him in



4 of 6

accordance with law. Consequently, connected miscellaneous petitions are closed.

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11.09.2023

Index : Yes/No
Internet : Yes/No
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5 of 6

To

The District Munsif cum Judicial Magistrate
Kattumanarkoil.



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6 of 6

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11.09.2023