



CrI.O.P No.7835 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2023

CORAM

**THE HONOURABLE Ms. JUSTICE R.N.MANJULA**

CrI.O.P No.7835 of 2021  
and CrI.M.P. Nos.5167 & 5168 of 2021

P.Sharadha

... Petitioner / fourth accused

Vs.

1. M/s.T.S.P. & Co. Rep. by its Proprietor,  
A.Thulasimani,  
S/o. Arumugam,  
No.54, Sidhi Vinayagar Koil Street,  
Tambaram Sanatorium,  
Chennai – 600 047.

2. A.Thulasi Mani

... respondents /complainants

3. M/s. 5 Star Hotel,  
Represented by its Managing Partner,  
K.Murugan S/o. Kamaraj  
Old No.830, New No.22,  
G.S.T. Road, Chennai – 600 047.

4. K.Murugan

5. K.Ramesh

... Respondents/accused 1,2&3



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Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to complaint in C.C. No.789 of 2019 (on the file of the Judicial Magistrate-I Court at Tambaram) and quash the same as against the petitioner / fourth respondent.

For Petitioner : Mr.K.Narayanan

For Respondents-1&2 : Mr.D.Manimaran

### **ORDER**

This petition has been filed to call for the records in C.C.No.789/2019 dated 19.09.2019 on the file of Judicial Magistrate-I, Tambaram and quash the same as against the petitioner.

2. The petitioner is the fourth accused in a private complaint filed by the first respondent company through his proprietor second respondent on the allegation that the cheque issued by the third respondent partnership firm was dishonoured due to insufficient funds. The first respondent is a proprietary concern which is involved in selling of provisional items. The accused 2 and 4 are running a hotel in the name and style of “5 Star Hotel” who is the third respondent herein. The



accused 2 and 4 are managing the affairs of the third respondents hotel and they used to purchase provisions from the first respondent's provisional shop on credit basis. Towards discharge of the dues payable to the first respondent, the second accused had issued two cheques dated 13.03.2019 and 09.04.2019 drawn on DCB bank Tambaram Branch, for a sum of Rs.9,41,177/- and Rs.9,14,174/- respectively. When the cheques were presented by the first respondent for collection on 11.04.2019, the same were returned for insuffienct funds. After complying the legal mandates, a complaint under Section 138 of Negotiable Instruments Act was filed by the complainant.

3. The learned counsel for the petitioner submitted that the petitioner is no way related to the affairs of third respondent hotel; the hotel by name "5 Star Hotel" was conducted by a partnership firm comprising the fourth and fifth respondents as partners; the petitioner's husband Perumal was also a partner of the said hotel and he is no more and hence the petitioner who is a fourth acused has been impleaded as a party to the proceedings; even as per the complaint it is the fourth respondent who is the authorised signatory for the cheques issued in the



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name of the third respondent partnership firm; just because the petitioner was the wife of deceased Perumal, she cannot be added as an accused for the actions managed and done by the respondents 3 to 5; the petitioner is no way related to the affairs of the company and hence there cannot be any criminality actions done by the other accused.

4. It is to be noted that the criminal complaint filed under Section 138 of Negotiable Instruments Act cannot be treated like suits filed for recovery of money in order to include all the partners or the in-laws of the deceased partners. As per Section 144 of Negotiable Instruments Act for the offences committed by a firm or a company, the managing partner or the Directors who are in charge of the company alone should be added as accused. So far as this petitioner is concerned she is neither a partner nor a person who can represent the third respondent.

5. Since the petitioner is not involved in any of the affairs of the third respondent it is unnecessary to implicate her as an accused in the case filed by the first respondent for the offence under Section 138 Negotiable Instruments Act.



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6. In view of the above stated reasons, the Criminal Original Petition is allowed and the proceedings in C.C.No.789/2019 on the file of the Judicial Magistrate-I, Tambaram is quashed as against this petitioner.

Connected miscellaneous petitions are closed.

**30.01.2023**

Index : Yes/No  
Speaking Order : Yes / No  
bkn

To:

1. The Judicial Magistrate-I, Tambaram.
2. The Public Prosecutor,  
High Court, Madras.



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

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