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CrI.O.P.No.6639 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 27.03.2023

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THE HON'BLE Mr. JUSTICE **G.CHANDRASEKHARAN**

CrI.O.P.No.6639 of 2023

and

CrI.M.P.No.4169 of 2023

1. Sri Velmurugan Startch Industries
by its Partner A.Muthuselvi

2. A.Muthuselvi

...Petitioners

Vs.

D.Vinoth

...Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.58 of 2021 on the file of the learned Judicial Magistrate, Rasipuram and quash the same.

For Petitioners : Mr.N.Suresh

ORDER

This Criminal Original Petition has been filed calling for the records in C.C.No.58 of 2021 on the file of the learned Judicial Magistrate, Rasipuram and to quash the same.



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2. The learned counsel for the petitioner submitted that the respondent filed a case in C.C.No.58 of 2021 under Sections 138 and 142 of Negotiable Instruments Act. The only ground on which this case is challenged is that there was no proper statutory notice given to the first accused. The complaint shows the first accused as Sri Velmurugan Startch Industries represented by its Partner A.Muthuselvi and the second accused as A.Muthuselvi. The cheque was also signed by the second accused for the first accused. The statutory notice was not issued to the first accused namely, the partnership firm and therefore, the case is not legally sustainable and maintainable. In support of his submission, he had produced a Judgment reported in **2022 ACD 776 (KER)** in the case of ***S.Velayudhan Pillai Vs. Chellath Franklin and another.***

3. Considered the submission of the learned counsel for the petitioner and perused the materials available on record.



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4. The complaint allegations show that the first petitioner is the partnership firm and the second petitioner is its partner. The first petitioner is represented by the second petitioner. There are business dealings between the petitioners and the respondent in connection with the supply of Tapioca (Kuchchikezhangu). The petitioners are liable to pay a sum of Rs.9,25,785/-. The second petitioner has knowledge and responsibility for the contract and business of the first petitioner. Towards the discharge of liability, the second petitioner issued a cheque in the name of the first petitioner for a sum of Rs.8,00,000/- bearing Cheque No.009022 dated 31.12.2020 drawn on Bank of India, T.Murugappatti Branch. When the cheque was presented for collection on 31.12.2020, it was returned as “Insufficient Funds” on 04.01.2021. The statutory notice was issued to the petitioners on 18.01.2021 and that was received by the petitioners on 20.01.2021. Even thereafter, no amount was paid, necessitating filing of the complaint.

5. As already stated, the only ground on which the complaint is challenged is that there was no proper statutory notice to the first petitioner.



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This Court finds from the records that there is a specific mention in the notice that the notice was issued to both the petitioners. However, the first petitioner is not properly described. The first petitioner was described as Sri Velmurugan Startch Industries represented by its Partner A.Muthuselvi and the second petitioner is described as A.Muthuselvi. It was not explained that the first petitioner is a partnership firm and the second petitioner is its partner. It is stated that the second petitioner has knowledge about the business dealings and she is responsible for the conduct of the business of the first petitioner. Therefore, there are enough information given with regard to the character of the first accused and the role of the first and second accused. Merely because the first petitioner is not properly described, we cannot come to the conclusion that the statutory notice was not given.

6. The Judgment cited by the learned counsel for the petitioner in **2022 ACD 776 (KER)** in the case of ***S.Velayudhan Pillai Vs. Chellath Franklin and another***, is the case where the notice was not at all given.



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However, this Court finds that notice was given to the partnership firm as well as to the partner. Therefore, the Judgment cited by the learned counsel for the petitioners is not applicable to the facts of this case. Therefore, on the ground raised by the first petitioner, the quashment of the proceedings in C.C.No.58 of 2021 on the file of the learned Judicial Magistrate, Rasipuram cannot be entertained.

7. In view of the above, this Court finds no merits in this petition. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

27.03.2023

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Index:Yes/No

Speaking Order: Yes/No



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G.CHANDRASEKHARAN.J.,

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