



WEB COPY



Crl OP No. 7441 / 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 7441 of 2021
and

Crl.M.P. No. 4932 of 2021

R. Balachandru

... Petitioner

Versus

M/s.VS Traders,
Rep. by its Partner,
V. Maheswaran,
S/o. K.M. Vishwanathan,
No. 3/3, Thirumal Nagar,
Narayanavalasu, Erode – 638 011.

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records pertaining to S.T.C. No. 27 of 2021 on the file of the Fast Track Judicial Magistrate No.II, Erode and quash the same as far as the petitioner is concerned.

For Petitioner : Mr. A. Mohamed Ismail.

For Respondent : Mr. K. Muthu Ganesa Pandiyan.

ORDER

The petition is to quash the final report for the alleged offence under Sections 138 and 141 of the Negotiable Instruments Act.



Crl OP No. 7441 / 2021

WEB COPY

2.It is alleged in the final report that the first accused firm had issued cheques for a total sum of Rs.18,92,619/- and when the said cheques were presented, they were returned with an endorsement 'Funds insufficient' and inspite of statutory notice, the first accused did not make the payment.

3.The learned counsel for the petitioner would submit that he was a partner in the first accused firm and resigned from the partnership firm on 01.09.2019 and hence, he is not liable for the offence of dishonoured cheques which had taken place from the months of January 2020 to March 2020. The learned counsel relied upon the Partnership Retirement Deed dated 01.09.2019.

4.The learned counsel for the respondent submitted that though the petitioner had resigned from the partnership firm, business transactions which resulted in the issuance of the impugned cheques took place, when the petitioner was a partner in the first accused partnership firm. Hence, he is also liable.



Crl OP No. 7441 / 2021

WEB COPY

5.This Court finds that the offence under Section 138 of the Negotiable Instruments Act would be made out only on the non-payment of the cheque amount inspite of the statutory notice. The cause of action had arisen for initiating the complaint only in the year 2020. Admittedly, the petitioner had resigned from the company in the year 2019. The complaint states about the retirement of the petitioner who is arrayed as A3 in Paragraph No.9 which reads as follows;

“9. Complainant submits that till the retirement of accused No.3, accused No.2 & 3 were looking after the day to day affairs of the partnership firm....”

In view of the admitted fact that the petitioner had resigned from the company much before the cause of action had arisen for instituting the impugned complaint, the petitioner cannot be said to be the person incharge and responsible to the company for the conduct of its business.



Crl OP No. 7441 / 2021

6.Hence, this Criminal Original Petition is allowed and the impugned complaint in S.T.C. No. 27 of 2021 on the file of the Fast Track Judicial Magistrate No.II, Erode as against the petitioner alone is quashed. The learned Magistrate shall proceed with the trial in so far as the other accused are concerned and decide the same on merits without being influenced by any of the observations made in this order. Consequently, the connected miscellaneous petition is closed.

19.06.2023

ay

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The Fast Track Judicial Magistrate No.II,
Erode.



WEB COPY



Crl OP No. 7441 / 2021

SUNDER MOHAN, J

ay

Crl.O.P. No.7441 of 2021
and
Crl.M.P. No. 4932 of 2021

Dated: 19.06.2023