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Crl.O.P.No.8664 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2023

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P. No.8664 of 2021

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Crl. M.P.No. 5689 of 2021

M/s.Vignesh Builders
Rep. by its Proprietor
Mr.N.Manivannan @ Manivannaperumal
S/o. Mr.Narayanasamy,
No.1, 3rd Floor,
Mother Apartment,
Raman Street,
Datchinamoorthy Nagar,
Puducherry – 605 009.

... Petitioner

Vs.

M/s.Sastha Associates
Rep. by its Power Agent Mr.S.Sivagurunathan
S/o.D.Shanmugam,
Plot No.65 – 68, 1st Cross,
Thirumalaivasan Nagar Extn,
Moolakulam,
Puducherry.

... Respondent



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PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records in S.T.C.No.518 of 2018 pending on the file of the Judicial Magistrate No.III, Puducherry and quash the same.

For Petitioner : Mr. V.S.Senthil Kumar

For Respondent : Mr. S.Prabhakaran

ORDER

The petition is filed to quash the complaint filed under Section 200 of Cr.P.C read with Sections 138 and 142 of the Negotiable Instruments Act.

2. It is alleged in the complaint that the petitioner had issued a cheque for a sum of Rs.6,34,849/- towards discharge of his liability; that when the said cheque was presented for collection, it was returned for the reason “*Contact Drawer*”; and that the petitioner had not paid



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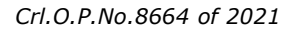
the cheque amount inspite of the statutory notice.

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3. The learned counsel for the petitioner would submit that the cheque was returned with an endorsement “*Kindly contact Drawer / Drawee Bank and please present again*”. He has produced a return memo issued by the Bank. The learned counsel further submitted that in view of the return, the respondent ought to have presented the cheque once again after contacting the Drawer and that this issue has been covered by the Judgement of this Court in ***Crl.O.P.No.10406 of 2019*** dated ***24.07.2019***, wherein, this Court had quashed the complaint which was filed for a return of the cheque for the very same reason.

4. The learned counsel for the respondent submitted that the matter has to be adjudicated only during the Trial and the complaint cannot be quashed at this stage.

5. This Court finds that in ***Crl.O.P.No.10406 of 2019***, in a similar circumstances, this Court had quashed the complaint which was



“5. The only ground that has been raised by the learned counsel for the petitioner is that, the cheque has been returned by the bank by requesting the respondent to contact the Drawer - Drawee Bank and present it again. The respondent without complying with the requisit has proceeded to file the complaint for an offence under Section 138 of the Negotiable Instrument Act. It is true that the Hon'ble Supreme Court of India has held that, for whatever reasons a cheque is returned, a complaint can be maintained under Section 138 of the Negotiable Instruments Act and if such a purposeful interpretation is not given to the provision, it will defeat the beneficial legislation which wants to penalize the persons who fail to honour a cheque, after issuing the same.

6. However, in the facts of the present case, the concerned bank has not returned the cheque on the ground of defect. It has been returned by directing the respondent to contact a concerned bank and present it again. In short, this endorsement cannot be held to be



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dishonour of cheque. In the considered view of this Court, the respondent without complying with the requirements of the bank, ought not to have proceeded to file a complaint under Section 138 of the Negotiable Instruments Act. The Court below went wrong in taking cognizance of the complaint.”

The observation made by this Court in the above case is squarely applicable to the facts of this case and therefore the impugned complaint is liable to be quashed.

6. In the result, the petition is allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

08.06.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No

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WEB COPY To

The Judicial Magistrate No.III,
Puducherry.



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SUNDER MOHAN. J,

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