



WEB COPY



Crl.O.P.Nos.15574 & 15813 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.Nos.15574 & 15813 of 2021
Crl.M.P.Nos.8494, 8495, 8626 & 8627 of 2021

1. Joseb Raj Arokiasamy
2. Vimalla Joseb

...Petitioners in both
Crl.O.Ps.

-Vs-

S.Rajendran

... Respondent in
both Crl.O.Ps.

COMMON PRAYER : Criminal Original Petitions filed under Section 482 of Cr.P.C., to call for the records relating to C.C.Nos.1031 & 1024 of 2018 respectively, pending on the file of the Fast Track Court III, Metropolitan Magistrate, Saidapet, Chennai and quash the same.

In both Crl.O.Ps.

For Petitioners : Mr.Anoj Elangovan
For Mr.T.Gowthaman

For Respondent : No appearance

COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings in C.C.Nos.1031 & 1024 of 2018 respectively, pending



Crl.O.P.Nos.15574 & 15813 of 2021

on the file of the Fast Track Court III, Metropolitan Magistrate, Saidapet, Chennai, thereby taken cognizance for the offences under Sections 138 r/w 141 of the Negotiable Instruments Act (hereinafter called as “the NI Act”) as against the petitioners.

2. The respondent filed complaint as against the petitioners for the offence under Section 138 r/w 141 of NI Act, alleging that the petitioners are the Directors of the company viz., Oceanic Tropical Fruits Private Limited, in which the respondent had worked as Manager - HR & Administration. At the time of relieving from the company, towards part payment of his settlement, the company issued two cheques for a sum of Rs.60,200/- each. When the cheques were presented for collection, the same were returned dishonoured for the reason that funds insufficient. After causing statutory notice, the respondent lodged the present complaints for the offence under Section 138 r/w 141 of the NI Act as against the petitioners.

3. The only grounds raised by the petitioners is that without adding the company as a party, there cannot be any vicarious liability on them to punish under Section 138 r/w 141 of the NI Act. Therefore, the



Crl.O.P.Nos.15574 & 15813 of 2021

company also impleaded as accused in the complaint.

WEB COPY

4. On perusal of the complaints revealed that, the respondent was issued with two cheques for the sum of Rs.60,200/- each, by the Oceanic Edibles International Limited. The said cheques were signed by the authorised signatory. After dishonouring the cheques, the respondent caused legal notice dated 10.10.2017 to the petitioners alone. Whereas the cheques were issued by the company called Oceanic Edibles International Limited and the company was not served with any statutory notice and the company was not implicated as an accused in the complaint lodged by the respondent in C.C.Nos.1031 & 1024 of 2018.

5. The Hon'ble Supreme Court of India and this Court repeatedly held that Section 141 of the NI Act deals with the offences committed by the companies and it clearly says that if an offence is committed by a company under Section 138 of the NI Act, every person, at the time of the offence was committed, was in-charge and responsible to the company in the conduct of the business of the company, is liable along with the company to be proceeded against the punished accordingly.



Crl.O.P.Nos.15574 & 15813 of 2021

WEB COPY

6. Further the Hon'ble Supreme Court of India repeatedly held that there cannot be any vicarious liability on the Directors of any company unless there is prosecution against the company. That apart the Directors/Managing Director/Joint Managing Director/other employees of the company cannot be prosecuted under Section 138 of the NI Act, unless the company is impleaded as an accused. The company is variously liable for the dishonour of cheque issued on behalf of the company and its authorized signatory.

7. While it being so, the respondent ought to have issued legal notice to the company and also ought to have impleaded the company as an accused. However, the respondent failed to issue notice to the company and also failed to implicate the company as an accused. Hence, the complaints filed by the respondent is not maintainable and it is liable to be quashed for the non-fulfilment of the requisites contemplated under Section 141 of the NI Act.



Crl.O.P.Nos.15574 & 15813 of 2021

WEB COPY 8. Accordingly, the proceedings in C.C.Nos.1031 & 1024 of 2018, on the file of the Fast Track Court III, Metropolitan Magistrate, Saidapet, are hereby quashed and both the Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are closed.

04.10.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

rts

To

The Metropolitan Magistrate,
Fast Track Court III,
Saidapet,



WEB COPY



Crl.O.P.Nos.15574 & 15813 of 2021

G.K.ILANTHIRAIYAN. J.

rts

Crl.O.P.Nos.15574 & 15813 of 2021 and
Crl.M.P.Nos.8494, 8495, 8626 & 8627 of 2021

04.10.2023