



Crl.O.P.No.25422 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2023

CORAM:

THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

Crl.O.P.No.25422 of 2021

and

Crl.M.P.No.14092 of 2021

P.S.Mathai

... Petitioner / 2nd Accused

-Vs-

Vinayaka Silks,
Rep. by its Proprietor,
D.Sumathi
w/o Devarajan,
3/33A, Pattamaniyakarar Street,
Nilavarapatty, Salem – 636 201.

... Respondent / Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for records pertaining to the proceedings in S.T.C.No.1448 of 2020 on the file of the Judicial Magistrate - VI, Salem, and to quash the same.

For Petitioner : Mr.C.Rajasekaran

For Respondent : No appearance



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ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in S.T.C.No.1448 of 2020 on the file of the Judicial Magistrate Court – VI, Salem, filed for the offences under Sections 138 and 142 of the Negotiable Instruments Act.

2.This petitioner is arrayed as A2 in the impugned complaint.

3.It is alleged in the complaint that for the alleged dues of the petitioner / A2, to the complainant, the 1st accused had issued a cheque for a sum of Rs.10,00,000/- in favour of the complainant; that the said cheque was presented for collection and the same was returned with an endorsement 'Funds Insufficient'; that in spite of the statutory notice the cheque amount was not paid. Hence the complaint.

4.The learned counsel for the petitioner would submit that even as per the complaint, the cheque was issued only by the 1st accused for the alleged dues of the 2nd accused. The parties had entered into an



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agreement dated 30.04.2017, wherein it is stated that the 2nd accused will handover the cheque signed by the 1st accused for a sum of Rs.10,00,000/-. Therefore, the petitioner who is not a signatory to the cheque cannot be made liable for the cheque issued by the 1st accused.

5.Though notice was served on the respondent and the name has been printed in the cause list, none has entered appearance for the respondent.

6.This Court on a perusal of the impugned complaint finds that the cheque was issued from the personal account of the 1st accused. The only allegation as against the 2nd accused / petitioner that he had handed over the cheque for the alleged dues of M/s.Mox International Trading Limited, in favour of the complainant / respondent. In the light of the admitted fact that the petitioner had not issued the cheque in favour of the respondent, the petitioner cannot be made liable for the alleged offence under Section 138 of the Negotiable Instruments Act. Hence, the impugned complaint is liable to be quashed as against the petitioner / 2nd accused alone.



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7.In the result, the impugned complaint in S.T.C.No.1448 of 2020 on the file of the Judicial Magistrate – VI, Salem, is quashed insofar as the petitioner / A2 is concerned. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Criminal Miscellaneous Petition is closed.

24.04.2023

smv

Index : Yes/No
Speaking order: Yes/No
Neutral citation : Yes/No

To,

- 1.The Judicial Magistrate – VI,
Salem.
- 2.The Public Prosecutor,
High Court of Madras.



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SUNDER MOHAN,J.
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