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Crl.O.P.No.28452 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2023

CORAM:

THE HON'BLE MR.JUSTICE **SUNDER MOHAN**

Crl.O.P.No.28452 of 2019 and
Crl.M.P.No.15186 & 15187 of 2019

Karuppanna Gounder Nagrajan

... Petitioner

Vs.

M/s.Empire Machine Tools Pvt. Ltd.
Represented and duly authorized by its
Manager S.Vijayakumar
S/o.Somu, No.124 A, Thulasi Layout,
Opp.Manis Theatre, Lakshmipuram,
Peelamedu, Coimbatore-641 004.

... Respondent

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records relating to the complaint in C.C. No.1906 of 2017 on the file of Judicial Magistrate, FTC- II, Coimbatore and quash the same.

For Petitioner : Mr.C.Gunasekaran for
Mr.I.Abrar Md Abdullah

For Respondent : No appearance(Notice served)

ORDER

This petition is filed to quash the complaint under Section 138 of the Negotiable Instruments Act 1882.



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2.It is alleged in the complaint that the petitioner/A3 is working as Director in the first accused company and therefore, he is in charge and was responsible for day-to-day affairs of the first accused company. The complainant's case is that the first accused issued a cheque on 28.02.2019 for the alleged amount of Rs.1,24,913/- due to the complainant. The said cheque was presented for collection and was returned on 09.04.2019 for the reason 'exceeds arrangements'. The statutory notice was issued to the first accused company and other accused and no payment was made to the complainant and hence the complaint.

3. Learned counsel for the petitioner would submit that the petitioner originally worked as Director in the first accused company. However, he tendered his resignation on 03.09.2018 and the same was duly informed to the statutory authorities in Form DIR-12 on 05.09.2018. Hence, the prosecution for the offence of the dishonouring the cheque dated 28.02.2019 would not lie as against the petitioner.

4.Though notice was served on the respondent privately as early in October 2019, the respondent has not entered appearance.



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5.This Court finds from the impugned complaint that the cheque dated 28.02.2019, which is the subject matter of the complaint was issued by the first accused company and the petitioner had resigned from the company on 03.09.2018, which was communicated to the authorities on 05.09.2018. The petitioner has produced the Form DIR-12 evidencing the notice of resignation to the Registrar of Companies. This document cannot be refuted by the complainant. Since the petitioner was not part of the company at the time of issuance of the cheque, he cannot be the person in charge and responsible for the conduct of the business of the first accused company.

6. Hence, the impugned complaint as against the petitioner alone is liable to be quashed and hence, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

09.03.2023

Index: Yes/No

Speaking / Non Speaking Order

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To

1. The Judicial Magistrate, FTC- II, Coimbatore.

2. The Inspector of Police,

B-2, Esplanade Police Station,
Chennai.

3. The Public Prosecutor,
High Court, Madras.

SUNDER MOHAN, J



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