



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 26.02.2024**

CORAM

**THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH**

Crl.O.P.No.1533 of 2024  
and Crl.MP.Nos.1065 & 1067 of 2024

1.Mr.Chandrasekar

2.Mrs.Gnanasundarai

... Petitioners/Accused

Vs.

Mr.Dhanasingh Prabhu

... Respondent/Complainant

**Prayer:** Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to call for the records relating to the complaint in STC.No.1106 of 2022, on the file of the Court of the learned Judicial Magistrate No.II, Pollachi and to quash the same.

For Petitioners

: Mr.R.Nanda Kumar

For Respondent

: Mr.S.Marishwaran

ORDER

This petition has been filed challenging the proceedings pending in STC No.1106 of 2022, on the file of Judicial Magistrate No.II, Pollachi.



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2. When the matter came up for hearing on 31.1.2024, this Court passed the following order:

Notice to the respondent returnable by 21.02.2024. Private notice is also permitted. The petitioners are also permitted to serve notice on the counsel appearing on behalf of the respondent before the Court below.

2. The main issue that was urged by the learned counsel for the petitioners is that the cheque was issued on behalf of the Partnership Firm and whereas, no statutory notice was issued to the Partnership Firm and the Partnership Firm was also not added as an accused in the complaint. Therefore, it was contended that Section 141 of the Negotiable Instruments Act, has not been complied with. A prima facie case has been made out. Hence, there shall be an order of stay of proceedings in S.T.C.No.1106/2022 on the file of the learned Judicial Magistrate No.II, Pollachi, till 21.02.2024.

3. Personal appearance of the petitioners is dispensed with, till 21.02.2024.

4. Post "for orders" on 21.02.2024.

3. Heard Mr.R.Nandha Kumar, learned counsel for the petitioners and Mr.S.Marishwaran, learned counsel for the respondent.

4. The petitioners are facing trial before the Court below for offence under Section 138 of the Negotiable Instruments Act, 1888. The short issue that arises



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for consideration in the present case is as to whether the complaint is maintainable as against the petitioners without adding the partnership Firm as an accused.

5.The issue that has been raised in the present case is no longer res integra. The Apex Court in *Himanshu v. B. Shivamurthy* reported in **2019 1 CTC 689** held that without issuing notice to the Company and without adding the Company as an accused, the complaint cannot be sustained as against the directors of the Company. The same concept was applied even insofar as partnership Firm and it was held that without arraying the Firm as accused the complaint cannot be maintained as against partners. Useful reference can be made to the judgment of the Apex Court in *Dilip Hariharan v. Bank of Baroda* reported in **2022 2 MWN CrI DCC 51**.

6.In the instant case, admittedly, the cheque was issued in the name of the Firm and it was signed by the 1<sup>st</sup> petitioner. However, neither the statutory notice was issued to the Firm nor was the Firm added as an accused in the complaint. Hence, the present complaint is unsustainable in the light of the above judgment and in the light of the plain reading of Section 141 of the Negotiable Instruments Act, 1888.



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**N. ANAND VENKATESH, J.**

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7.In the light of the above, the proceedings in STC.No.1106 of 2022, on the file of Judicial Magistrate No.II, Pollachi, is hereby quashed and this criminal original petition stands allowed. Consequently, connected miscellaneous petitions are closed.

**26.02.2024**

KP

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

Judicial Magistrate No.II, Pollachi

Crl.O.P.No.1533 of 2024