



Crl.O.P.No.2893 of 2024

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.2893 of 2023 and
Crl.M.P.Nos.1704 and 1705 of 2023

1.Srinivasha Fashions Private Limited and
Srinivasa Exports International
rep.by its Managing Director,
Coppa Vasudevarao Ravindran

2.Coppa Vasudevarao Raveendran

3.Vijayalashmi Raveendran

4.Varun

5.Apurva Kulkarni

... Petitioners

Vs.

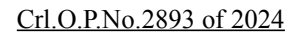
N.A.S.Periyasamy

..Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to quash the proceedings in STC.No.617/2022 on the file of Fast Track Court, Judicial Magistrate No.II, Erode.

For Petitioners

: Mr.Y.Kajanavas



5. To substantiate the above claim, the bank account statement of the petitioners maintained in Corporation Bank was also produced before this Court. It is seen that a sum of Rs.8,00,000/- was debited in the account of the petitioners on 14.01.2019 and this amount was transferred to the respondent through RTGS. That apart, yet another sum of Rs.3,00,000/- was also debited on 01.03.2019 and the amount was transferred through RTGS to the respondent. In view of the same, out of the total amount of Rs.16,00,227/-, the petitioners had already repaid



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back a sum of Rs.11,00,000/- by 01.03.2019. However, on 18.03.2019, the respondent deposits the cheque for a sum of Rs.16,00,227/-.

6. Where there is part payment of the debt, the payment must be endorsed on a cheque under Section 56 of the NI Act and the cheque cannot be presented for encashment without recording the part payment. If the unendorsed cheque is dishonoured on presentation, the offence under Section 138 would not be attracted since the cheque did not represent a legally enforceable debt at the time of encashment. Useful reference can be made to the judgment of the Apex Court in ***Dashrathbhai Trikambhai Patel Vs., Hitesh Mahendrabhai Patel and others*** reported in ***MANU/SC/1294/2022*** and the relevant paragraphs are extracted hereunder:

"29. Under Section 56 read with Section 15 of the Act, an endorsement may be made by recording the part-payment of the debt in the cheque or in a note appended to the cheque. When such an endorsement is made, the instrument could still be used to negotiate the balance amount. If the endorsed cheque when presented for encashment of the balance amount is dishonoured, then the drawee can take recourse to the provisions of Section 138. Thus, when a part- payment of the debt is made after the cheque was drawn but before the cheque is encashed, such payment must be endorsed on the cheque under Section 56 of the Act. The cheque cannot be presented for encashment without recording the part payment.



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If the unendorsed cheque is dishonoured on presentation, the offence under Section 138 would not be attracted since the cheque does not represent a legally enforceable debt at the time of encashment.

30. In view of the discussion above, we summarise our findings below:

(i) For the commission of an offence under Section 138, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation;

(ii) If the drawer of the cheque pays a part or whole of the sum between the period when the cheque is drawn and when it is encashed upon maturity, then the legally enforceable debt on the date of maturity would not be the sum represented on the cheque;

(iii) When a part or whole of the sum represented on the cheque is paid by the drawer of the cheque, it must be endorsed on the cheque as prescribed in Section 56 of the Act. The cheque endorsed with the payment made may be used to negotiate the balance, if any. If the cheque that is endorsed is dishonoured when it is sought to be encashed upon maturity, then the offence under Section 138 will stand attracted;

(iv) The first respondent has made part-payments after the debt was incurred and before the cheque was encashed upon maturity. The sum of rupees twenty lakhs represented on the cheque was not the 'legally enforceable debt' on the date of maturity. Thus, the first respondent cannot be deemed to have committed an offence under Section 138 of the Act when the cheque was dishonoured for insufficient funds; and

(v) The notice demanding the payment of the 'said amount of money' has been interpreted by judgments of this Court to mean the cheque amount. The conditions stipulated in the provisos to Section 138 need to be fulfilled in addition to the ingredients in the substantive part of Section 138. Since in this case, the first respondent has not committed an offence under Section 138, the validity of the form of the notice need not be decided."



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N.ANAND VENKATESH, J.

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7. In the light of the above discussion, the continuation of criminal proceedings as against the petitioners will result in abuse of process of law which requires the interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C. Accordingly, the proceedings in STC.No.617/2022 on the file of Fast Track Court, Judicial Magistrate No.II, Erode, is quashed. In the result, this criminal original petition stands allowed. Consequently, connected miscellaneous petitions are closed.

08.02.2024

Index : Yes/No
Internet : Yes/No
Speaking/Non-Speaking Order
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To

- 1.Fast Track Court, Judicial Magistrate No.II,
Erode.
- 2.The Public Prosecutor,
High Court, Madras.

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