



WEB COPY



CrI.O.P.No.5105 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2024

CORAM

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

CrI.O.P.No.5105 of 2024

and

CrI.M.P.No.3712 of 2024

ARDYS Foods and Hospitality Services LLP,
Rep.by its Partner Ashmitha

... Petitioner

Vs.

M/s.Gem Edible Oil Private Limited,
Rep.by its authorised signatory
P.Mohanraj

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to quash the proceedings of the S.T.C.No.1876 of 2023 pending on the file of the learned Metropolitan Magistrate, Fast Track Court at Magisterial Level-IV, George Town, Chennai.

For Petitioner : Mr.T.Balaji

For Respondent : Mr.K.Mukund Rao

ORDER

This Criminal Original Petition is filed to quash a private complaint initiated under Section 138 of Negotiable Instruments Act. Challenging before this Court on the short point that the accused, a



CrI.O.P.No.5105 of 2024

registered LLP been prosecuted without any human body to represent it.

WEB COPY

2. According to the petitioner, the accused LLP is represented by its partners and it is a duly registered concern. While so, alleging that the cheque issued by the LLP bounced without sufficient fund, the complaint has been filed against the LLP as sole accused. The petitioner being the partner of the company, he is now forced to defend the LLP in a case where the statutory notice informing the return of cheque not been issued to him either as representative of LLP or in his individual capacity. To explain the circumstances under which the cheque was issued or to pay the cheque amount within a period of 15 days from the receipt of the notice. Having deprived of that opportunity, the petitioner as a partner of the LLP cannot be forced to face the trial on behalf of the LLP without disclosing in the complaint how the partners are responsible for discharging the liability of LLP.

3. Per contra, the learned counsel appearing for the respondent submitted that the accused firm had purchased goods worth Rs.65,000/- and gave the subject cheque, but on presentation, the same was returned for insufficient fund and hence the complaint. The statutory legal notice



CrI.O.P.No.5105 of 2024

issued to the firm was received by the firm, but had not replied. Having failed to reply to the statutory notice, the petitioner cannot take advantage of his own fault.

4. This Court on reading of the complaint finds that the accused is described as under:

“The accused is ARDYS Foods and Hospitality Services LLP, at No.25, Lakshmipuram 2nd Street, Coimbatore-641 004.”

Paragraph 2 of the complaint reads as below:-

“2.The accused running a Limited Liability Company and the partners are personally liable for discharge of all liabilities of the company. The accused had authorized the complainant to fill in the date and drawee details while presenting the cheque, based on the accused authorization the complainant filled up the details of the complainant in the cheque and presented the same.”

5. The complainant having said that the partners are personally liable to discharge the liability of the complainant, it should have atleast



Crl.O.P.No.5105 of 2024

mentioned who are the partners of the company. Having failed to mention the name of the partners and also filed a complaint without mentioning any human body to represents the LLP, the complaint has to fail for being lodged against the jurisdic body without any human body to represent the juristic body.

6. The learned counsel appearing for the respondent made a request that he may be permitted to amend the complaint since the details of the partners were made available only now. This Court is of the view that, that amendment cannot be permitted at this point of time, since the statutory requirement for initiate the complaint by this time is barred by limitation in this case.

7. In view of the above, this Criminal Original Petition is disposed of. Consequently, the connected Criminal Miscellaneous Petition is also closed.

03.07.2024

rpl

To

The Metropolitan Magistrate, Fast Track Court at Magisterial Level-IV,
George Town, Chennai.



WEB COPY



CrI.O.P.No.5105 of 2024

Dr.G.JAYACHANDRAN,J.

rpl



WEB COPY



CrI.O.P.No.5105 of 2024

CrI.O.P.No.5105 of 2024

03.07.2024