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CrI.O.P.No.19138 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.19138 of 2023 and
CrI.M.P.Nos.12846 & 12847 of 2023

Amith Kumar

... Petitioner

Vs.

M/s.J.K.Synergies by its Proprietor,
Jai Krishnan Panicker HUF,
24—Phase I,
GIDC-Naroda, Ahmedabad,
Gujarat State 382 330,
rep.by its Power of Attorney Muralidharan

... Respondent

Prayer: This Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records pertaining to the case in S.T.C.No.254/2022 on the file of the Judicial Magistrate Fast Track Court No.II, Erode and quash the same.

For Petitioner

: Mr.J.Titus Enock

ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.254/2022, on the file of the Judicial Magistrate Fast Track Court No.II, Erode.

2. The respondent has filed a complaint against the petitioner for offence under Section 138 of the Negotiable Instrument Act. The Court below had taken cognizance and had issued summon to the petitioner. Proceedings have been put



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to challenge mainly on the ground that cheque was issued on behalf of the Partnership Firm and whereas the statutory notice was not issued on the Partnership Firm and it was issued only on the partners and that apart, even the complaint was filed only against partners, without making Partnership Firm as a party. In view of the same, it was contended that the requirement under Section 141 of the Negotiable Instrument Act, has not been complied with.

3. Heard the submissions of learned counsel for the petitioner.

4. The respondent was served with notice. Name of the respondent has also been printed in the cause list. There is no representation for the respondent, either in person or through counsel.

5. In the instant case, on going through the cheque that was issued to the respondent, it is seen that same has been signed on behalf of the Partnership Firm, named as 'Sri Pusspam Textile Mill LLP'. The Registration Certificate of this Firm was also produced before this Court. Admittedly, neither the statutory notice was issued to the Firm nor the Firm has been added as an accused in this case.



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6. The facts of this case is squarely covered by the judgment of the Apex Court in *Dilip Hariramani Vs. Bank of Baroda reported in (2022 (2) MWN DCC 51)*.

7. Concept that was applied to a Company was also applied to the Partnership Firm and it was held that without issuing the statutory notice to the Partnership Firm and without adding the Partnership Firm as an accused, the complaint is not maintainable as against partners.

8. In the light of the above discussion, the continuation of proceedings as against the petitioner is unsustainable and it will result in abuse of process of law. Hence, the proceedings in S.T.C.No.254/2022, on the file of the Judicial Magistrate Fast Track Court No.II, Erode , is quashed.

9. This Criminal Original Petition is allowed on above terms. Consequently connected miscellaneous petitions are closed.

11.01.2024

Speaking Order/Non-speaking Order

Index :Yes/No

Internet:Yes/No

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To

1.The Judicial Magistrate Fast Track Court No.II,

Erode

<https://www.mhc.tn.gov.in/judis>



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2. The Public Prosecutor,
High Court, Madras



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N.ANAND VENKATESH.,J

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11.01.2024