



Crl.O.P.No.19506 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.19506 of 2023

And

Crl.M.P.Nos.13156 and 13157 of 2023

1.M/s.Shree Jayasakthi Timber Mart
Represented by its Partner
R.Ramdoss

2.R.Uma

... Petitioners

Vs.

M/s.VIL International Pvt. Ltd.,
Represented by its Managing Director
Mr.Satya Rao.K.V.

... Respondent

Prayer:

Petition filed under Section 482 of Cr.P.C., seeking to call for the records in S.T.C.No.2555 of 2023, pending on the file of the XXV Metropolitan Magistrate, Egmore, Chennai and to quash the same as far as the petitioners are concerned.

For Petitioners : M/s.K.Balasubramaniam
For Respondent : M/s.V.Jai Hari Sudhaa

O R D E R



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This petition has been filed to quash the proceedings pending in

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S.T.C.No.2555 of 2023 on the file of the XXV Metropolitan Magistrate,
Egmore, Chennai.

2. When the matter came up for hearing on 01.09.2023, this
Court passed the following order:

*"Notice to respondent returnable
by four weeks. Private notice is also permitted.
The petitioners are also permitted to serve
notice on the counsel appearing for the
respondent before the Court below.*

2. *The main point that was raised by
the learned counsel for the petitioners is that
the cheque was issued by A2 in his individual
capacity and whereas, the partnership firm and
the wife of A2, have been added as A1 and A3
in the complaint filed under Section 138 of the
Negotiable Instruments Act.*

3. *A prima facie case has been made
out for grant of an interim order and hence,
there shall be an order of stay of proceedings
in STC No.2555 of 2023 on the file of the XXV*



Metropolitan Magistrate, Egmore, Chennai for a period of four weeks. The presence of the petitioner is dispensed with, for a period of four weeks.

4. *Post this case after four weeks."*

3.After service of notice, the case came up for final hearing today. This Court heard the learned counsel for the petitioners and the learned counsel for the respondent and carefully perused the materials available on record.

4.The specific case of the respondent/ complainant is that he had supplied timber only to the partnership firm (A1) and towards this liability, A2 had issued a cheque in favour of the respondent to the tune of Rs.29,62,916/-. When this cheque was deposited, it was returned with an endorsement 'funds insufficient'. After the service of the statutory notice, the complaint came to be filed as against the partnership firm and two partners.

5.The complaint for offence under Section 138 of the Negotiable Instruments Act can be made only as against the drawer of the



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cheque. In the present case, the drawer of the cheque is A2. Even though the liability is attributed to the partnership firm, A2 in his individual capacity had undertaken to clear the said liability. Pursuant to the same, he had issued a cheque in favour of the respondent. Hence, if this cheque is dishonoured, the prosecution can be launched only as against A2 and not against the firm (A1) and A3 who is yet another partner of the firm. Incidentally, A3 is the wife of A2.

6.The question of instituting proceedings against the partnership firm and the partners will arise only if the cheque has been issued on behalf of the firm. In such an event, Section 141 of the Negotiable Instruments Act will come into play. That will not apply to the facts of the present case.

7.In the light of the above discussion, the continuation of the proceedings as against the petitioner is unsustainable and is liable to be interfered by this Court. Only A2 has to face the proceedings since he has issued the cheque in his individual capacity for the liability incurred by the firm. Accordingly, the proceedings in S.T.C.No.2555 of 2023 on the file of the learned XXV Metropolitan Magistrate, Egmore, Chennai, is hereby quashed insofar as the petitioners are concerned.



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8.This criminal original petition is allowed and there shall be a direction to the learned XXV Metropolitan Magistrate, Egmore, Chennai, to proceed against A2 in accordance with law and complete the proceedings in S.T.C.No.2555 of 2023, within a period of six months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petitions are closed.

30.01.2024

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

- 1.The XXV Metropolitan Magistrate,
Egmore, Chennai.
- 2.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.



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