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Criminal Original Petition No.19822 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Criminal Original Petition No.19822 of 2023

and

Crl.M.P. Nos.13412 & 13413 of 2023

Razak

...Petitioner

Vs

Farook

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973, praying to call for the entire records pertaining to S.T.C.No.991 of 2023 pending on the file of the Metropolitan Magistrate, Fast Track Court No.IV at George Town, Chennai and quash the same.

For Petitioner : Mr.R.Jayaprakash

For Respondent : Mr.G.Mohammed Aseef

ORDER

This Criminal Original petition has been filed to quash the



proceedings in STC No.991 of 2023, pending on the file of the Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai.

2. Heard Mr.R.Jayaprakash, learned counsel for the petitioner and Mr.G.Mohammed Aseef, learned counsel for respondent.

3. The petitioner is facing trial before the Court below for offence under Section 138 of the Negotiable Instruments Act. The main ground that has been raised by the petitioner is that the cheque was admittedly issued on behalf of the partnership firm and that neither the notice was issued to the partnership firm nor the partnership firm added as an accused in the complaint. After the filing of the complaint, a rejoinder was issued on 03.08.2022 stating that due to inadvertence, the notice was not issued on the partnership firm. Therefore, according to the petitioner the mandate under Section 141 of the Negotiable Instruments Act, has not been complied with.

4. The issue involved in the present petition is squarely covered by the earlier order passed by this Court in Crl OP No.13147 of 2015 dated 23.0.2019. The relevant portions in the order are extracted hereunder :-



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12. Section 69(2) of the Indian Partnership Act, 1932 deals with the effect of non registration. Section 69(2) Act, specifically provides for a bar in maintaining a suit where

- (i) Suit is by an unregistered firm*
- (ii) Suit is to enforce a right arising from a contract*
- (iii) Suit is filed against a third party and*
- (iv) persons suing are not shown in register of firms as partners in firm.*

It is to be borne in mind that the bar contemplated under Section 69(2) of the Indian Partnership Act will come into play only when the Suit is filed to enforce a right arising from a contract against a third party.

19. Section 141 of the Negotiable Instruments Act deals with the concept of vicarious liability, wherein for the offence committed by the Company or a partnership firm, the directors or the partners, as the case may, are deemed to be guilty of the offence when it is shown that they are in charge of and responsible for the conduct of the day to-day affairs of the business or the firm, as the case may be. While interpreting the provision, the Hon'ble Supreme Court has categorically held that the complaint cannot be maintained against the directors



of the Company, without making the company as an accused person. This concept has been extended even for Partnership Firms. The registration or non-registration of the Partnership Firm will have no bearing insofar as 141 of the Negotiable Instruments Act is concerned.

20. In view of the above discussion, this Court is not in agreement with the submissions made by the learned counsel for the respondent. In this case admittedly, the cheque was given in the name of the Partnership Firm and after the cheque was dishonored, no statutory notice was issued to the Partnership Firm, and the Partnership Firm was not made as an accused in the complaint. Only the partners have been shown as accused persons in this complaint. Such a complaint is unsustainable and not in accordance with Section 141 of the Negotiable Instruments Act and the law laid down by the Honble Supreme Court. Therefore, the proceedings will have to be necessarily interfered with by this Court in exercise of its jurisdiction under Section 482 of Cr.P.C. In the result the proceedings in C.C.No.550 of 2012, pending on the file of the learned Judicial Magistrate No.I, Villupuram, is hereby quashed and the Criminal Original Petition is accordingly allowed. Consequently, the connected miscellaneous petitions are closed.



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5. The above findings rendered will squarely apply to the facts of the present case. In this case, no statutory notice was issued to the partnership firm and the partnership firm was also not made as an accused in this case. Therefore, this fatal aspect cannot be got over by sending a rejoinder notice.

6. In the result, the proceedings in S.T.C.No.991 of 2023 pending on the file of the Metropolitan Magistrate, Fast Track Court No.IV at George Town, Chennai, is hereby quashed.

7. This Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.

02.02.2024

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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To

1. The learned Metropolitan Magistrate, Fast Track Court No.IV
at George Town, Chennai
2. The Public Prosecutor,
High Court, Madras.



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N.ANAND VENKATESH, J

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