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Crl. O.P.No. 21240 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.09.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.OP.No.21240 of 2024

and

Crl.MP.No.13338 of 2024

Senthil Kumar

.. Petitioner

Vs.

**SMEINTELLECT GROWTH CAPITAL
PRIVATE LIMITED.**

Rep by its Authorized Person:

Sasikala

Corporate Office at Door No.1471,
H-Block, V5, 21st Street, Anna Nagar,
Chennai-600 040.

.. Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C/
r/w 528 of BNSS, to call for the records relating to the private complaint
in S.T.C.No.9992 of 2023 on the file of the learned XXVI Metropolitan
Magistrate Court, Egmore, Chennai pending for disposal and quash the
same as illegal.

For Petitioner : Mr.F.Wellington

For Respondent : Mr.Nivedita Ganesan



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ORDER

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This Criminal Original Petition is filed to quash criminal prosecution initiated under Section 138 of Negotiable Instruments Act on the ground that the petitioner is neither signatory of the cheque nor connected to the first accused company.

2. The learned counsel appearing for the petitioner submits that the cheque which is subject matter of the complaint drawn by one Subbulakshmi in a personal capacity. However, in the complaint, she has been shown as proprietor of M/s.New Supreme Tailoring and this petitioner who is a relative of said Subbulakshmi been arrayed as third accused who has no nexus with the complainant in any manner whatsoever.

3. The learned counsel appearing for the complainant submits that the said Subbulakshmi and this petitioner had jointly borrowed money and executed promissory note and to discharge the said debt, the said cheque was issued. Therefore, the petitioner who is jointly and severally liable been the person responsible for the proprietrix concern by name



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New Supreme Tailoring. He further submits that the loan agreement executed on 20.12.2022 by the second and third accused. When the money was borrowed for running the garment unit by name New Supreme Tailoring, the active involvement of this petitioner been expressly spoken in the complaint. Therefore, the liability of the petitioner to be drawn invoking Section 141 of Negotiable Instruments Act, since the petitioner at the time of committing the offence was incharged of the firm along with the second accused.

4. The vicarious liability of the persons managing the affairs of the company is well defined under Section **141** of the Negotiable Instruments Act and adequately interpreted by the Courts in India. The execution of promissory note or loan agreement jointly will not fasten the liability to face the criminal prosecution under Section 138 of Negotiable Instruments Act for issuance of cheque without adequate fund by some other person who does not represent the company or association of person.

5. In this case, though the complaint says that the cheque was issued to discharge the debt of the proprietary concern by name New



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Supreme Tailoring, perusal of the cheque clearly shows that it is the personal cheque of Subbulakshmi who has drawn the cheque and issued it in favour of the complainant. Therefore, the knowledge of issuance of cheque by Subbulakshmi cannot be attributed to the petitioner herein, though he may be relative of Subbulakshmi and he would have been joint borrower of loan from the complainant.

6. Section 141 of Negotiable Instruments Act will get attracted only if the cheque drawn by the company or association of persons not by individual. It is found that the complaint against the accused is not sustainable. Hence, the case against this petitioner alone, stands quashed.

7. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

30.09.2024

Vv

To

1. The XXVI Metropolitan Magistrate Court, Egmore, Chennai
2. The Public Prosecutor,
High Court of Madras.



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Dr.G.JAYACHANDRAN,J.

Vv

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