



Crl.O.P.No.21317 of 2023

In the High Court of Judicature at Madras

Dated : 09.1.2024

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Criminal Original Petition No.21317 of 2023
& Crl.M.P.Nos.14703 & 14704 of 2023

Balasubramaniam

...Petitioner

Vs

Nishanth

...Respondent

PETITION under Section 482 of the Criminal Procedure Code to call for the records pertaining to the proceedings in S.T.C.No.1215 of 2022 on the file of the District Munsif-cum-Judicial Magistrate, Madukarai and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.K.S.Karthik Raja
For Respondent : Mr.R.Sanjay

ORDER

This is a petition filed by the petitioner seeking to quash the proceedings in S.T.C.No.1215 of 2022 on the file of the District Munsif-cum-Judicial Magistrate, Madukarai.



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2. The respondent filed a complaint under Section 138 of the Negotiable Instruments Act (for short, the Act) against the petitioner and his son on the ground that they had borrowed money, that in discharge of the liability, a cheque was issued to the tune of Rs.50 lakhs, that when the same was presented for collection, it was returned with an endorsement 'funds insufficient' and that after serving a statutory notice, the private complaint came to be filed against the petitioner and his son. The petitioner is arrayed as the second accused in the complaint.

3. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent.

4. The main ground that was raised by the learned counsel for the petitioner is that the first accused is the signatory of the cheque, that he had drawn the cheque in favour of the respondent, that the petitioner (A1) happens to be the father of the first accused and that therefore, he has been added as the second accused in the complaint.



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5. In the considered view of this Court, a complaint for an offence under Section 138 of the Act can be filed against the drawer of the cheque alone. The only exception found under Section 141 of the Act is where the cheque is issued on behalf of a company or a partnership firm.

6. In the instant case, the cheque was issued by the first accused in his individual capacity. Hence, he is the drawer of the cheque and it is only against him the private complaint under Section 138 of the Act can be prosecuted. The petitioner has been arrayed as the second accused only on the ground that he was aware of the transaction and he was involved in the transaction and he is also the father of the first accused.

7. These facts will not be relevant for the sake of adding the petitioner as the second accused in the complaint filed by the respondent. Section 138 of the Act does not entitle the respondent to prosecute the petitioner as the complaint is not maintainable against him.



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8. In the light of the above discussions, this criminal original petition is allowed and the proceedings in S.T.C.No.1215 of 2022 on the file of the District Munsif-cum-Judicial Magistrate, Madukarai is quashed in so far as the petitioner is concerned. The Court below is directed to proceed further with the complaint as against the first accused. It is made clear that the entire proceedings shall be completed within a period of four months from the date of receipt of a copy of this order. Consequently, the connected Crl.M.Ps. are closed.

09.1.2024

To

1.The District Munsif-cum-
Judicial Magistrate, Madukarai.
Coimbatore District.

2.The Public Prosecutor,
High Court, Madras.

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RS

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