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Crl.O.P.No.22285 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.12.2024

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

**Crl.O.P.No.22285 of 2024**

**in**

**Crl.A.Sr.No.21687 of 2023**

Balasingh Samuel

... Petitioner

Vs.

1. M/s.Franch Herbs Technologies Ltd.,

2. Samsen Papli

Chairman/Managing Director,  
M/s.Franch Herbs Technologies Ltd.,  
No.3-A and 3-B Vishwavilla Apartment,  
31 and 32 Bulfore Road, Kellys,  
Chennai-10.

... Respondents

Prayer: Criminal Original Petition filed under Section 378 (4) of Cr.P.C., to grant leave to the petitioner/appellant to file an appeal as against the impugned order dated 09.05.2019 made in CC.No.3084 of 2016 on the file of learned Metropolitan Magistrate, FTC-III at Saidapet.



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Crl.O.P.No.22285 of 2019

For Petitioner : Mr.J.Franklin

For Respondents : V.T.Narendiran

### **ORDER**

The petition seeks leave to file an appeal against the Judgement of Acquittal dated 09.05.2019.

2. The case of the petitioner is that towards discharge of its liability, the first respondent/company had issued five cheques and when those cheques were presented for collection, they were dishonoured by the Bank of Baroda, for the reasons "*Funds Insufficient*" and in spite of the statutory notice, the respondents did not make any payment.

3. The trial Court found that the cheques were admittedly issued from the account of the first respondent, which is a company. However, the statutory notice has not been sent to the company as mandated to invoke the provisions of Section 138 of the Negotiable Instruments Act, 1881.



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4. It is well settled that the cause of action to maintain a complaint under Section 138 of the Negotiable Instruments Act, 1881, would arise only on non-payment after the demand for payment is made under Section 138 (b) of the Negotiable Instruments Act, 1881. Since no notice has been sent to the first respondent, who is the principal offender, the complaint cannot be maintained against the first respondent and consequently, the second respondent who would be vicariously liable only if the first respondent is liable, cannot be prosecuted. Hence, the Judgment of the trial Court cannot be faulted.

5. In view of the above, this Criminal Original Petition stands dismissed on merits.

11.12.2024.

Index : yes/no  
Neutral citation : yes/no  
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**SUNDER MOHAN,J.**

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