



Crl.R.C.No.2156 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.R.C.No.2156 of 2024 and
Crl.M.P.No.17022 of 2024

M/s.Chopra Industrial Corporation,
Represented by its Power Agent,
Mr.Ashish Chopra (Age-27),
No.140, Linghi Chetty Street,
Chennai-600 001.

... Petitioner

Vs.

1.N.Lalith Kumar,
S/o.Navaratan,
Proprietor of M/s.Padmashri Agencies,
No.10, Subbuchetty Street, Park Town,
Chennai – 600 003.

2.Hemanth Kumar Jain,
S/o.Navaratan,
Proprietor of M/s.Padmashri Agencies,
No.10, Subbuchetty Street, Park Town,
Chennai – 600 003.

... Respondent



Crl.R.C.No.2156 of 2024

PRAYER: Criminal Revision Petition filed under Sections 397 & 401 of Code of Criminal Procedure, to call for the records of the order dated 24.09.2024 passed by the learned XXVI Metropolitan Magistrate at Egmore in Cr.M.P.No.50915 of 2024 in C.C.No.2675 of 2021 and set aside the same.

For Petitioner : Mr.Leelesh Sundaram for
M/s.Nathan and Associates

ORDER

This revision has been filed challenging the impugned order, dated 24.09.2024 passed by the learned XXVI Metropolitan Magistrate, Egmore, Chennai in Crl.M.P.No.50915 of 2024 in C.C.No.2675 of 2021 in dismissing the petition filed by the petitioner seeking to add the 2nd respondent herein as one of the accused.

2.The petitioner has filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 alleging that the 1st respondent herein had issued the cheque for a sum of Rs.1,48,320/- towards discharge of his liability; and that he was a Proprietor of M/s.Padmashri Agencies. During the course of the trial, when the Bank Manager was examined, he had



deposed that M/s.Padmashri Agencies is a proprietorship concern and the Proprietor is the 2nd respondent herein and not the 1st respondent and therefore, the petitioner had sought to implead the 2nd respondent as one of the accused.

3.The Trial Court found that the petitioner ought to have verified as to who is the Proprietor of M/s.Padmashri Agencies and filed the complaint; that in any case the proprietorship concern is not an independent entity and the complaint against the 2nd respondent is not be maintainable in the absence of any statutory notice; that the complaint against the 2nd respondent would also be barred by limitation; and that what cannot be achieved directly cannot be achieved indirectly by filing the petition under Section 319 Cr.P.C.

4.The learned counsel for the petitioner would submit that it is only after examination of the Bank Manager, that the petitioner came to know that the cheque was signed by the 2nd respondent; that the 1st respondent made him believe that it was signed by him and even in response to the



statutory notice, the 1st respondent had merely stated that he had not issued the cheque and had not stated that the cheque was signed by the 2nd respondent and therefore, the petitioner's application under Section 319 of Cr.P.C ought to have been allowed by the Trial Court and prayed for setting aside the impugned order.

5.On perusal of the impugned order, this Court finds that on receipt of the statutory notice, the 1st respondent had replied stating he is not the Proprietor of M/s.Padmashri Agencies. The petitioner ought to have verified as to who is the Proprietor before making a complaint. In any case, the 2nd respondent cannot be summoned as an accused under Section 319 Cr.P.C in a complaint under Section 138 of the Negotiable Instrument Act, 1881 since a complaint should be preceded by a statutory notice and the cause of action would arise only on failure of payment of cheque amount in spite of the receipt of the statutory notice.

6.This Court is of the view that the order impugned passed by the



Crl.R.C.No.2156 of 2024

learned Magistrate is in accordance with law and there is no reason to interfere with the same. However, if the petitioner is aggrieved by any act of the 1st respondent in deceiving and handing over a cheque of the 2nd respondent, it is open to him to pursue other remedies available to him in law.

7. With the above liberty, this criminal revision case stands dismissed confirming the impugned order dated 24.09.2024 in Crl.M.P.No.50915 of 2024 in C.C.No.2675 of 2021 passed by the learned XXVI Metropolitan Magistrate, Egmore, Chennai. Consequently, connected criminal miscellaneous petition is closed.

05.12.2024

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation: Yes/No

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To

The XXVI Metropolitan Magistrate,
Egmore.



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Crl.R.C.No.2156 of 2024

SUNDER MOHAN, J.

vv2

Crl.R.C.No.2156 of 2024

05.12.2024