



Crl.O.P.(MD) No.314 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2024

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THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P.(MD) No.314 of 2024

and

Crl.M.P.(MD) Nos.214 & 215 of 2024

H.Ansar Ali

... Petitioner

Vs.

P.S.Mani @ Pitchaimuthu Mani

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to call for the records in S.T.C.No.817 of 2021 on the file of the Judicial Magistrate No.II, Kumbakonam and quash the same as illegal.

For Petitioner : Mr.H.S.Mohammed Rafi

ORDER

Notice and private notice were ordered on the Respondent/Complainant. Notice on the counsel for the Respondent before the Judicial Magistrate Court No.II, Kumbakonam in S.T.C.No.817 of 2021 was also served. Therefore, the service of notice is completed.



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The name of the Respondent was printed in the cause list. However, no one appeared for Respondent.

2. The learned Counsel for the Petitioner would submit that the Petitioner had filed this Criminal Original Petition seeking to quash the Charge Sheet in S.T.C.No.817 of 2021 on the file of the Judicial Magistrate Court No.II, Kumbakonam. The Petitioner is the sole accused.

3. It is the contention of the learned Counsel for the Petitioner that without impleading the firm, the Respondent had filed a private complaint under Section 138 of the Negotiable Instruments Act, 1881. Instead of prosecuting the firm, the Respondent had prosecuted the individual. Notice was not caused to the firm. Statutory notice was issued only on the Petitioner.

4. It is contention of the learned Counsel for the Petitioner that the Petitioner had sent the cheque only in the capacity of Managing Partner of the firm namely 'M/s.AMD Housing Developers', in which, the Petitioner is the Managing Partner only. It is submission of the learned Counsel for the Petitioner that the partnership firm was a borrower, for which, the



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Petitioner had issued the cheque. The loan transaction of the partnership firm was already settled. There is no debt or liability for the partnership firm with the Respondent herein. The Respondent had misused the cheque issued by the partnership firm while availing loan. The same was also settled. The cheque bearing No.105408 pertains to the current account of 'M/s.AMD Housing Developers'. It was part of the cheque book issued by the bankers to the partnership firm as early as 20.10.2014 falling under the series 105366 to 105415. The Respondent had not issued statutory notice to the said firm namely 'M/s.AMD Housing Developers'. The cheque issued by the partnership firm in or about 2014 for some other old transaction had been misused by the Respondent in the year 2021 as if the cheque was issued by the Petitioner in his individual capacity.

5. The Petitioner would submit that as on the date of filing of the complaint, there is no liability or debt for 'M/s.AMD Housing Developers' or for the Petitioner herein as an individual towards the Respondent. The Petitioner received SMS alert on 27.08.2021 from his bankers [Central Processing Clearance Centre] stating that the said banker had received the cheque bearing No.105408 for a sum of Rs.4,00,000/- [Rupees Four Lakhs only]. Immediately, after knowing the same, the



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Petitioner issued stop payment notice to the banker after depositing the sufficient funds in the current account of the partnership firm as required by the banker. The said stop payment notice was issued by the Petitioner on 27.08.2021 morning itself.

6. It is further submission of the learned Counsel for the Petitioner that in the partnership firm's current account, there were sufficient funds. Since the cheques were misused by the Respondent, the partnership firm issued stop payment notice to its banker since the details of the old cheque was not readily available for cross verification. Later, on verification, it was realised that the said cheque was issued for old transaction during the loan availed by 'M/s.AMD Housing Developers'. The Respondent had not issued any statutory notice to the partnership firm as mandated under Section 141 of the Negotiable Instruments Act, 1881. The Petitioner had sent reply in his individual capacity for the statutory notice received by him as though he is liable to pay towards the cheque amount. The Petitioner in his reply warned the Respondent not to proceed with the complaint as it is not maintainable. Still, the Respondent had filed complaint under Section 138 of Negotiable Instruments Act, 1881 as though the Petitioner is liable to pay the cheque amount.



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7. The learned Counsel for the Petitioner also drew attention of this Court to the additional typed set of papers wherein the copies of the bank passbook had been furnished regarding the bank transactions of the Petitioner. The Petitioner also furnished the copy of the cheque bearing No.105408 which was signed by the Petitioner on behalf of 'M/s.AMD Housing Developers'. The learned Counsel for the Petitioner had placed reliance on the following decisions:

- i. ***C.Balasubramanian Vs. Velpandian***, dated 25.11.2022 passed by this Court in ***Crl.O.P.(MD) No.13585 of 2022***.
- ii. ***AMD Housing Developers and another Vs. Chinna Ponnusamy***, dated 25.11.2022 passed by this Court in ***Crl.O.P.(MD) No.11118 of 2022***.

8. The Respondent had not appeared even after service of notice. The contention raised by the Petitioner in this Petition is that the private complaint filed by the Respondent in S.T.C.No.817 of 2021 on the file of the Judicial Magistrate Court No.II, Kumbakonam is not maintainable as the partnership firm 'M/s.AMD Housing Developers' had not been impleaded as a proper and necessary party and the complaint was filed against the individual, Petitioner herein. In the cases involving



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transactions by a Company or Firm or Partnership Firm, the said Company/Firm/Partnership Firm shall be the necessary party as per Section 141 of the Negotiable Instruments Act, 1881. In the instant case, 'M/s.AMD Housing Developers' was not made as a party. The complaint proceeds as though the Petitioner in his individual capacity borrowed the money from the Respondent and had not re-paid the same. He had issued cheques towards repayment of loan. Under these circumstances, the reliance placed by the learned Counsel for the Petitioner on the earlier orders of this Court in ***C.Balasubramanian Vs. Velpandian***, dated 25.11.2022 passed by this Court in ***Crl.O.P.(MD) No.13585 of 2022*** and ***AMD Housing Developers and another Vs. Chinna Ponnusamy***, dated 25.11.2022 passed by this Court in ***Crl.O.P.(MD) No.13585 of 2022*** is found justified.

9. In the light of the above order passed by this Court earlier in ***Crl.O.P.(MD) No.13585 of 2022*** and in ***Crl.O.P.(MD) No.13585 of 2022*** which were based on the rulings of the Hon'ble Supreme Court in ***Himanshu Vs. B.Shivamurthy***, reported in ***(2019) 3 SCC 797*** and that of this Court in ***Vaikundamani and others Vs. Bakrudeen***, in ***Crl.O.P.No. 15223 of 2018***, the complaint preferred by the Respondent in S.T.C.No.



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817 of 2021 on the file of the Judicial Magistrate No.II, Kumbakonam is liable to be quashed.

10. Even though the notice was given to the Respondent through Court as well as privately and notice was served through the counsel for the Respondent before the Judicial Magistrate No.II, Kumbakonam, he had not appeared either in person or through his Counsel. Therefore, the Respondent was aware of the outcome of this Petition.

11. In the result, this Criminal Original Petition is allowed and the private complaint in S.T.C.No.817 of 2021 on the file of the Judicial Magistrate No.II, Kumbakonam is quashed. Consequently, connected Miscellaneous Petitions are closed.

13.03.2024

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

To
The Judicial Magistrate No.II,
Kumbakonam,
Thanjavur District.



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SATHI KUMAR SUKUMARA KURUP, J.

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