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Crl.O.P.(MD)No.9162 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved : 21/12/2023

Date of Pronounced : 15/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

Crl.OP(MD)No.9162 of 2023

and

CMP(MD)No.7492 of 2023

1.S.Saravanan
S/o.S.Chandrasekaran
Sri Meenakshi Builders
Managing Partner
No.235, Madurai Road,
Ambathura Post-624 302,
Athoor Taluk,

2.L.S.Aravindkumar : Petitioners/A1 and A2

Vs.

A.Gopi : Respondent/Complaint

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records relating to the case in STC No.130 of 2023 on the file of the District Munsif-cum-Judicial Magistrate Court, Athoor, Dindigul District and quash the same as illegal and pass such further or other order.

For Petitioners : Mr.R.R.Kannan

For Respondent : Mr.J.William Christopher



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O R D E R

This criminal original petition has been filed seeking quashment of the case in STC No.130 of 2023 on the file of the Judicial Magistrate, Athoor, Dindigul District.

2.The facts in brief:-

The respondent herein filed a complaint under section 138 of the Negotiable Instruments Act in STC No. 130 of 2013 against the accused stating that the accused are running a company namely Shree Meenakshi Builders and A2 is a partner. Both of them obtained a loan amount of Rs.9,00,000/- for developing their business activities. On 29/06/2018, evidencing the same they also issued receipts. Towards discharge of the loan amount, they issued a cheque drawn on Canara Bank, Chinnalapatti Branch, bearing No.2865865, on 08/12/2022. A2 was also present at the time of borrowing. It was presented for payment, returned stating that no sufficient funds available, on 14/12/2022. After completing the statutory formalities, he filed the present complaint.



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3. Seeking quashment of the same, this petition is filed by the petitioners on the ground that even as per the complaint statement, the loan was borrowed for the benefit of the partnership firm and the cheque was also issued by the partnership firm, without adding the partnership firm as a party under section 142 of the Negotiable Instruments Act, the complaint is filed, which is *per se* illegal.

4. Heard both sides.

5. Only a short point arises for consideration here.

6. Entire records have been called for from the trial court and perused.

7. We will straightaway refer to the cheque on the subject. Wherein we find that the cheque was issued in favour of the complainant namely A.Gopi for Rs. 9,00,000/-. The drawer is mentioned as 'For Sree Meenakshi Builders namely the first petitioner herein. So naturally, the partnership firm must be shown as an accused.



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8.The learned counsel appearing for the petitioners would straightaway rely upon the order of this court passed in **Crl.OP No.13147 of 2015, dated 23/07/2019 (Rengabashyam and another Vs. Ramesh)** wherein a similar situate arose. Wherein this court relied upon the judgment of the Hon'ble Supreme Court in **Aneeta Hoda Vs. Godfather Travels and Tours Private Limited (2012(5) SCC 661)** has observed that what applies to the company equally applies to the partnership as stated in the case of N.Elangovan Vs. C.Ganesan (2014(4) MLJ (Crl) 517.

9.So whether this partnership firm is a registered one or unregistered one cannot be gone into in this petitioner.

10.*Prima facie*, it is seen that the Firm is the drawer of the cheque. So the Firm ought to have been added as prime accused. Without adding, *prima facie* the complaint is not maintainable. On that sole ground, the case in STC No.130 of 2023 on the file of the District Munsif-cum-Judicial Magistrate, Athoor, Dindigul District is liable to be quashed.



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11.In the result, this criminal original petition is **allowed**. The case in STC No.130 of 2023 on the file of the District Munsif-cum-Judicial Magistrate, Athoor, Dindigul District is quashed as against the petitioners. Consequently connected Miscellaneous Petition is closed.

15/03/2024

Index:Yes/No
Internet:Yes/No
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To,

The District Munsif-cum-
Judicial Magistrate Court,
Athoor,
Dindigul District.



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G.ILANGOVAN, J

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