



Crl.O.P.No.3159 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.3159 of 2023

Vikas Chudiwala

.... Petitioner

Vs

R.Ravinderkumar

.... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records pertaining to C.C.No.2378 of 2013 pending on the file of FTC III, Metropolitan Magistrate Court, Chennai and quash the same.

For Petitioner : Mr.K.Ravi

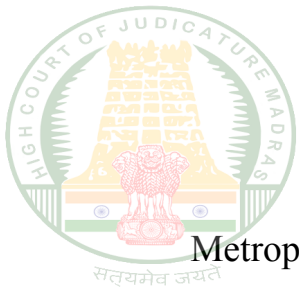
Senior counsel

For Respondent : Mr.M.Nandakumar

for M/s.Eswar Kumar and Rao

ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No. 2378 of 2013 on the file of the FTC III,



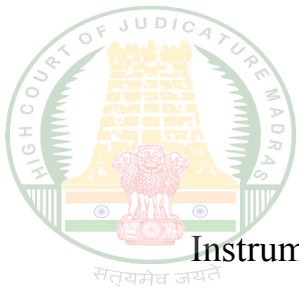
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Metropolitan Magistrate Court, Chennai.

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2. The petitioner is arrayed as 2nd accused in the complaint lodged by the respondent for the offences punishable under Section 138 of the Negotiable Instruments Act in S.T.C.No.2378 of 2013 on the file of the FTC III, Metropolitan Magistrate Court, Chennai alleging that the respondent had borrowed a sum of Rs.19,62,500/- to repay the same with interest at the rate of 1.5% p.a. On 26.07.1996, the petitioner had remitted a sum of Rs.10,68,000/- upto January 2013 towards interest and principal as against the cheque amount of Rs.19,62,500/- . When it was presented for encashment, the same has been returned for the reason of “insufficient funds” on 05.02.2013. After issuance of legal notice, since the petitioner herein did not repay the said amount, the respondent preferred a complaint against the petitioner under Section 138 of Negotiable Instrument Act.

3. It is the further case of the petitioner that the first accused was the sole proprietary concern of the petitioner's father, the third accused. The petitioner is an authorised signatory of the first accused, being the 2nd accused and filed this petition to quash the proceedings on the ground that the petitioner is found guilty under Section 138 of the Negotiable



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Instrument Act, 1881. The petitioner was only an authorised signatory for

signing the cheques of the first accused and not concerned with its business and the cheque was issued by the proprietary concern, and as such the complaint itself does not disclose the requisite averments to bring about the case within the purview of Section 141 of the NI Act. The petitioner is not vicariously liable under Section 141 of NI Act. As per Section 138 of the NI Act, only the drawer of the cheque can be held liable for an offence punishable under Section 138 of the NI Act. An authorised signatory acting on behalf of the principal cannot be said to be the “drawer” of the cheque “on an account maintained by him with a banker” under Section 138 of the NI Act. Further, Section 141 of the said Act will have no application to proprietaryship concerns as they are owned by individuals and do not have a separate corporate identity.

4. Heard the learned counsel on either side and perused the materials available on record.

5. The Hon'ble Supreme Court in the case of ***Bijoy Kumar Moni vs. Paresh Manna and Another*** in Crl.A.No.5556 of 2024 dated 20.12.2024, it



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has been held as under :-

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74. However, the peculiar factual situation of the present case and the plight of the complainant is not lost upon us. We are conscious of the fact that the option of bringing civil action against the accused or the hospital will be of no avail to the complainant as the claims are hopelessly time barred. Further, it is also not open for the complainant to initiate proceedings under Section 138 of the NI Act afresh by impleading Shilabati Hospital Pvt.Ltd as an accused as the time period prescribed for issuance of statutory notice under Section 138 has long expired.
75. It is trite law that an act may constitute an offence under more than one statute. The encashment of the cheque for an amount of Rs.7,00,000/- issued by the complainant in favour of the accused stood proved during the course of the trial. Further, the conduct of the accused in not replying to the statutory notice of dishonour of cheque issued by the lawyer for the complainant and in not taking the plea of the cheque having been drawn on the account of the company in his capacity as a Director during the course of trial undoubtedly raises questions as regards his dishonest intention in not repaying the amount borrowed by him from the complainant.
76. In such circumstances, although it is not possible to hold the accused liable for the offence under Section 138 of the NI Act, yet the possibility of him having committed the offence of cheating



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cannot be ruled out. Prima facie, the mens rea (guilty mind) of the accused speaks for itself.”

6. In view of the above, complaint lodged by the respondent is not maintained as against the petitioner and hence the proceeding in C.C.No.2378 of 2013 is liable to be quashed.

7. Accordingly, this criminal original petition stands allowed and the proceedings in C.C.No.2378 of 2013 on the file of the FTC III, Metropolitan Magistrate Court, Chennai is hereby quashed. However, liberty is given to the respondent to approach the jurisdictional police station and lodge a complaint for the offence committed by the petitioner for cheating.

13.03.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
kkd

To

FTC III, Metropolitan Magistrate Court,
Chennai.



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