



Crl.O.P.No.2620 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.2620 of 2023

and

Crl.M.P.No.1536 of 2023

L.Gurusave

.... Petitioner

VS

G.Uma Mageswaran

.... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records pertaining to S.T.C.No.172 of 2021 on the file of Judicial Magistrate, Vaniyambadi, Tirupattur District and quash the same.

For Petitioner : Mr.C.Johnson

For Respondent : Mr.S.Sadasharam

ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.172 of 2021 on the file of Judicial Magistrate, Vaniyambadi, Tirupattur District.

2. The petitioner is an accused in the complaint lodged by the



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respondent for the offences punishable under Sections 138, 141 & 142 of the Negotiable Instruments Act in S.T.C.No.172 of 2021 on the file of the Judicial Magistrate, Vaniyambadi, Tirupattur District alleging that the respondent has supplied the bamboo materials and joss powder to the petitioner to the tune of Rs.11,72,283/- and the details of the dates and cheque amounts are as follows:-

<i>Date</i>	<i>Amount</i>
22.11.2020	Rs. 98,070 Rs. 1,26,378
25.11.2020	Rs. 1,48,680
28.11.2020	Rs. 60,190 Rs. 2,00,000
09.12.2020	Rs. 1,11,510
12.12.2020	Rs. 2,00,000 Rs. 1,71,700
16.12.2020	Rs. 55,755
Toal	Rs.11,72,283

After receipt of the goods, the petitioner has issued a post dated cheque for the said amount. When it was presented for encashment and the same has been returned as “insufficient funds” on 15.12.2020. After issuance of legal notice, the petitioner herein has not repaid the amount. Hence, the respondent preferred a complaint against the petitioner under Sections 138, 141 and 142 of Negotiable Instrument Act, 1881.



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3. The learned counsel appearing for the petitioner would submit that the cheques was issued by the petitioner . However, the respondent has failed to serve any notice to the company and failed to implead the company in the complaint filed for the offence under Section 138 of Negotiable Instrument Act,1881. The petitioner is being the Managing Director of M/s.Shree Vari Agarbatti Pvt.Ltd.,only has been implicated as an accused .

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

5. On perusal of the records would show that the cheque was issued in the name of the company namely, Ms/Shree Vari Agarbatti Pvt.Ltd., and signed by the Managing Director. However, the respondent ought to have issued notice to the company and other Directors. But the respondent had issued notice only to the authorized signatory of the said company and lodged a complaint only as against the petitioner who is the Managing Director of the said company.



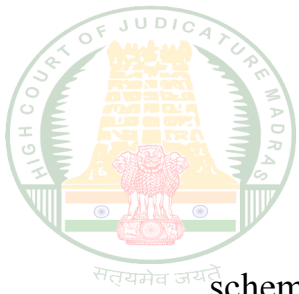
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6. Further, the petitioner signed the cheque only on behalf of the company in his capacity as Managing Director and not on his personal capacity. In the absence of company being arraigned as an accused, a complaint against the person in the personal capacity could not be held maintainable.

7. As per Section 138 of the NI Act, where any cheque drawn by a person on an account maintained by him with a banker for the payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, after returning of the cheque by the bank unpaid, the payee or the holder in due course of the cheque as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque. Section 7 defines “ drawer” as the maker of a bill of exchange or cheque and “drawee” as the person thereby directed to pay.

8. Section 141 of Negotiable Instrument Act, is an exception to this



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scheme of Negotiable Instruction Act and provides for vicarious liability of persons other than the drawer of the cheque in cases where the drawer of the cheque under Section 138 is a corporate person.

9. Therefore, it is clear that as per the legislative scheme it is only the drawer of the cheque who is sought to be made liable for the offence punishable under Section 138 of the said Act. Thus, the next question that requires consideration is that, whether a Director of a company, who is also the authorized signatory, to sign and issue cheques on its behalf could be said to be the drawer of a cheque drawn upon the bank account held in the name of the company. In other words, whether such an authorized signatory could be said to maintain the bank account upon which the dishonoured cheque has been drawn for the reason that such a person has the authority to enter into transactions using the bank account

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of the company and also look after the day to day functioning of the bank account of the company.

10. Therefore, in the absence of the company as a party to the crime as an accused along with the other Directors, the complaint under



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Section 138 of the Negotiable Instrument Act, is not at all maintainable and is liable to be quashed.

11. Accordingly, this criminal original petition stands allowed and the proceedings initiated in S.T.C.No.172 of 2021 on the file of Judicial Magistrate, Vaniyambadi, Tirupapatur District is hereby quashed. Consequently, connected miscellaneous petition is closed.

13.03.2025

Neutral citation : Yes/No
Speaking/non-speaking order
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To

The Judicial Magistrate Court, Vaniyambadi,
Tirupattur District.

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