



CrI.O.P.No.7722 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2025

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.7722 of 2025

and

CrI.M.P.Nos.4996 & 4997 of 2025

Malliga

... Petitioner

Verus

Kumaragiri Spinner (P) Ltd.,
represented by its Manager,
J. Suresh Kumar, Aged 36 years,
S/o. G. Jayaraman,
No.60-A4, Nehru Nagar,
Thiucgengode Road, Pallipalayam,
Erode – 638 006.

... Respondent

Prayer: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records of the Private Complaint in STC.No.289 of 2024 on the file of the Fast Track Judicial Magistrate No.1, Erode and quash the same insofar as the Petitioner/Accused No.3 is concerned.

For Petitioner : Mr. K. J. Parthasarathy



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ORDER

WEB COPY This Criminal Original Petition has been filed to call for the records of the Private Complaint in STC.No.289 of 2024 on the file of the Fast Track Judicial Magistrate No.1, Erode and quash the same insofar as the Petitioner/Accused No.3 is concerned.

2. The case of the prosecution is that the petitioner is working as a partner in the accused/A1's partnership firm. The complainant is a manufacturer of Yarn. The accused firm used to purchase yarn from the company of the complainant's company on credit basis. Due to various credit purchases, the accused firm owed Rs.35,27,601/- to the complainant. The complainant alleges that the accused/A2 on behalf of the accused/A1 and with the knowledge and consent of the accused/A3, had signed and issued two cheques. When the complainant presented the cheques for collection, they were returned as "Insufficient Funds". Therefore, the complainant issued a notice on 11.05.2024 to the accused and calling upon them to pay a sum of Rs.34,52,340/-, due under the cheques within 15 days from the date of receipt of that notice. But, they failed to repay and thereby, the accused committed the offence punishable under Section 138 r/w Section 142 of the Negotiable Instruments Act, 1818 as amended by Act 55 of 2002. Therefore, the complainant filed a Private



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Complaint before the Fast Track Judicial Magistrate Court No.1, Erode, in

which, the petitioner was arrayed as accused/A3 and summons were issued to her. Aggrieved by the same, the petitioner filed the above petition.

3. The learned counsel for the petitioner submits that the allegations levelled against the petitioner by the respondent are frivolous. Despite having knowledge of that the petitioner is not a signatory authority of the Negotiable Instruments, the complainant unwarrantedly mentioned the name of the petitioner in the complaint and also served notice to her. The accused/A2, who is the signatory authority of the accused/A1's firm, issued the two cheques to the complainant. Therefore, he prays to allow the petition on the ground that the petitioner is not at all connected with the offence as alleged by the complainant.

4. Heard the learned counsel for the petitioner and perused the material placed before this Court.

5. On perusal of the record, it is clear that specific averments have been made against the petitioner, which *prima facie* attract the offences under Section 138 r/w 142 of the Negotiable Instruments Act. That apart, the



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petitioner is also one of the partner in the accused/A1's firm and the second accused/A2 is the husband of the petitioner/A3, and that the accused/A2 issued the two cheques with the knowledge and consent of the accused/A3. Further, the complainant after giving intimation to the accused presented the cheques for collection, they were returned as "Funds Insufficient". Apart from that, the trial is going on and now the complainant was examined as P.W.1 and there is a *prima facie* as against the petitioner. Hence, at this stage, this Court does not find any grounds to quash the complaint filed in STC.No.289 of 2024 pending on the file of the Fast Track Judicial Magistrate No.1, Erode.

6. The Hon'ble Supreme Court of India in the judgment reported in **2019 (4) SCC 351** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr., (CrI.A.No.579 of 2019 dated 02.04.2019)*** while dealing with the petition to quash the entire criminal proceedings held that the High Courts have no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and therefore, there was no *prima facie* case made out as against the accused. It could be done only by the trial Court while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order that the charge sheet has been laid on the basis of the inconsistency statement under Section 180 of the



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Bharatiya Nagarik Suraksha Sanhita, 2023.

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7. Further, the Hon'ble Supreme Court of India in the judgment reported in **2019 (10) SCC 686** in the case of ***Central Bureau of Investigation Vs. Arvind Khanna, (Crl.A.No.1572 of 2019*** dated 17.10.2019) held that the High Courts cannot record the findings on the disputed facts. The defence of the accused is to be tested after appreciation of evidence by the trial Court during the trial. Therefore, this Court has no power to consider the disputed facts under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

8. The Hon'ble Supreme Court of India in another judgment dated **02.12.2019** passed in ***Crl.A.No.1817 of 2019*** in the case of ***M.Jayanthi Vs. K.R.Meenakshi & anr***, held that while considering the petition for quashment of complaint or charge sheet, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. Further, the Court can also see whether the preconditions requisite for taking cognizance have been complied with or not and whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.



Whether the accused will be able to prove the allegations in a manner known to

law would arise only at a later stage i.e., during trial.

9. Further this Court cannot observe at this stage that the initiation of criminal proceeding itself is malicious. Whether the criminal proceeding is malicious or not, is not required to be considered at this state. The same is required to be considered at the conclusion of the trial. Therefore, the ground raised by the petitioners to quash the final report/charge sheet cannot be entertained to quash the entire proceedings.

10. Considering the facts and circumstances of the case, there is sufficient evidence to proceed with the case. The charge under Section 138 r/w 142 of the Negotiable Instruments Act, is well-founded. The case was taken on file in STC. No.289 of 2024 and now the complainant has been examined as P.W.1. The petitioner was arrayed as the accused/A3, who is wife of the accused/A2 and there are specific allegations against the petitioner. Therefore, the petitioner is not entitled for the relief as prayed for, and this Court is not inclined to quash the entire proceedings as against the petitioner in STC. No.289 of 2024 pending on the file of the learned Fast Track Judicial Magistrate No.1, Erode.



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11. Accordingly, this Criminal Original Petition stands dismissed.

WEB COPY Consequently, connected miscellaneous petitions are also closed.

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Index : Yes/No

Speaking order /Non-Speaking order

Neutral Case Citation: Yes/No

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To

1. The Fast Track Judicial Magistrate Court No.1, Erode.



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G.K.ILANTHIRAIYAN, J.

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