



Crl.O.P.No.4538 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2025

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.O.P.No. 4538 of 2023

and

Crl.M.P.No.2845 of 2023

K.Satish Kumar

... Petitioner

Vs.

A.P.Rajendran

... Respondent

Prayer: Criminal Original Petition filed under Section 528 of BNSS, 2023, to call for the entire records connected with S.T.C.No.1950 of 2019 on the file of the learned Fast Track Judicial Magistrate, Tiruppur and quash the same.

For Petitioner : Mr.M.Lourdu Savio

For Respondent : No appearance

ORDER

This Criminal Original Petition is filed to quash the complaint in S.T.C.No.1950 of 2019 on the file of the learned Fast Track Judicial Magistrate, Tiruppur.



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2. The respondent/complainant filed a private complaint under Section 138 of Negotiable Instruments Act read with Section 200 Cr.P.C., against A1 to A3. The allegation in the complaint indicates that the first accused is a Company and the other accused persons namely A2 and A3 are partners of the said Company and they are also aware of the day-to-day affairs of the Company. The 3rd accused, who is the petitioner herein, in the usual course of their business, obtained financial assistance from the respondent-complainant for a sum of Rs.6,00,000/- on executing promissory note and promised to return the same within two years with interest but the accused did not pay within the time. Towards the said amount, the third accused gave a cheque dated 24.01.2019 for a sum of Rs.2,00,000/- and the second accused issued another cheque dated 13.02.2019 for Rs.6,00,000/-. The respondent-complainant presented the cheque for collection and the same was returned as "Funds insufficient". Thereafter, the complainant issued a statutory notice to all the accused persons, intimating them about the dishonour of the cheque. Since the accused did not make the payment and issued reply notice denying the borrowal of the amount, the complainant has initiated the



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prosecution in S.T.C.No.1950 of 2019 before the Fast Track Judicial Magistrate, Tiruppur under Sections 138 of Negotiable Instruments Act, 1881 read with 200 Cr.P.C.

3. Learned counsel for the petitioner submitted that the petitioner-A3 is one of the partner of S.K.Garments and he is not aware of the day-to-day affairs of the Company. One Kalaiselvan-A2 is the authorised signatory and managing partner of the said Company at the relevant time when the subject cheque was issued. Now the said Kalaiselvan is no more. After the death of Kalaiselvan, the partnership firm itself was closed. He further submitted that the petitioner-A3 being a partner is not sufficient to make the person liable under Section 141 of Negotiable Instruments Act. As per Section 141 of Negotiable Instruments Act, the person sought to be made liable should be in charge of and responsible for the conduct of the business of the Firm of Company at the relevant time when the subject cheque was issued. There was no fastening of vicarious liability on the petitioner, as the petitioner is not in overall control of the day-to-day affairs of the Company. Hence the allegations contained in the complaint as against the petitioner are vague and



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indefinite and he had no role to play in commission of the offence. He further submitted that the petitioner never issued promissory note in favour of the complainant, however, the complainant filed fabricated forged promissory note as a document along with the complaint. He further submitted that respondent has not made any averments as to how the petitioner is responsible for running the business or involved in day-to-day affairs of the business of A1. Therefore, the ingredients of Section 141 of the Negotiable Instruments Act has not been satisfied in the complaint and therefore, the complaint is liable to be quashed.

4. In support of his contentions, the learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Apex Court in the case of ***S.M.S.Pharmaceuticals Ltd., Vs. Neeta Bhalla and Another*** reported in ***CDJ 2005 SC 692***. He also relied upon the orders of this Court in the case of ***Ramesh Vs. Sree Venkateswara Fabrics Rep. by its Prop.P.Seethappan*** reported in ***CDJ 2021 MHC 6804*** and ***N.G.Thangavel Vs. Sree Venkateswara Fabrics Rep. by its Prop.P.Seethappan*** reported in ***CDJ 2021 MHC 6805***.



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5. On a perusal of the records it is seen that in the cause title of this petition itself the petitioner name was mentioned as partner of the said Company i.e., S.K.Garments. The petitioner-A3 is none other than the son of the signatory i.e., A2-Kalaiselvan. The said Kalaiselvan already died. It is seen from the complaint that both the petitioner and Kalaiselvan are actively participated in the day-to-day affairs of the Company. The main contention of the petitioner is that he has not borrowed loan on behalf of the Company and he has not signed in the subject cheque but averments made in the complaint shows that the petitioner had knowledge about the cheque issued in favour of the complainant. Therefore, the contention of the petitioner that he is not aware of the day-to-day affairs of the Company or not, will come into light, only after trial.

6. There is no quarrel with the settled proposition of law that as per Section 141 of Negotiable Instruments Act, at the time of offence was committed, the person, who was in charge of, and was responsible to the company for the conduct of the business of the company, as well as



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the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

7. In the case hand, the petitioner-A3, who was one of the partner of the said Company is none other than the son of the signatory i.e., A2-Kalaiselvan. Both A2 and A3 actively participated in the day-to-day of the affairs of the company. Therefore, the decisions referred by the petitioner are not applicable to the present case on hand.

8. Considering the facts and circumstances and also considering the submission made by the petitioner, this Court is of view that the petitioner is one of the partners of the Company-A1 and he had knowledge about the cheque issued in favour of the complainant and he has also actively participated in the day-to-day affairs of the Company. It is open to the petitioner to establish the fact that he was not in-charge of the Company at the earlier point of time, and those things have to be established only before the trial Court. Hence, this Court does not find any merit in this Criminal Original Petition and the same is liable to be dismissed.



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9. Accordingly, this Criminal Original Petition is dismissed.

Consequently, connected miscellaneous petition is closed.

30.01.2025

Index : Yes/No

Neutral Citation Case : Yes/No

Speaking Order : Yes/No

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To

The Fast Track Judicial Magistrate,
Tiruppur.



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P.VELMURUGAN, J

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