



Crl.O.P.Nos.2347, 14535 and 14547 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2025

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.Nos.2347, 14535 and 14547 of 2023
and Crl.M.P.Nos.1299, 1300, 9075, 9077, 9078 and 9079 of 2023

1. M/s Oban Fashion Private Limited,
represented by its Managing Director
Siddhant Agarwal

2. Siddhant Agarwal
3. Ramesh Agarwal
4. Vikash Agarwal
5. Mukesh Agarwal

... Petitioners **in all Crl.O.Ps**

Vs

Eashwer Exports,
represented by its
Managing Partner
A.Arun

... Respondent **in all Crl.O.Ps**

COMMON PRAYER: Criminal Original Petitions are filed under Section 482 of Cr.P.C/ Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records relating to STC.Nos.1284, 1448 and 1441 of 2022 on the file of the learned Fast Track Judicial Magistrate at Tirupur and quash the same.

In all Crl.O.Ps

For Petitioners : Mr.AR.M.Arunachalam

For Respondent : Mr.N.Maylsamy



WEB COPY

COMMON ORDERS

These Criminal Original Petitions have been filed challenging the charge sheets in STC.Nos.1284, 1448 and 1441 of 2022 on the file of the learned Fast Track Judicial Magistrate at Tirupur and to quash the same.

2. The petitioners and the respondents are one and the same in all the petitions. Therefore, this Court is inclined to pass a common order.

3. The respondent is the complainant in all the cases and the petitioners are arrayed as A1 to A5 for the offences punishable under Sections 138 and 142 of Negotiable Instruments Act. The case of the respondent is that it is a partnership firm and is engaged in the manufacturing of garments. While being so, the accused intended to do business with the respondent and placed orders for supply of garments. As per the orders, the respondent supplied garments on credit basis. As on 30.06.2021, there was due to the tune of Rs.67,96,572/-. Towards part-payment of the dues, the accused had issued 8 cheques for different amount. All the cheques were presented for collection. But all the cheques were returned dishonoured for the reason "Payment Stopped by the Drawer". After statutory notice as contemplated under Section 138 of Negotiable Instruments Act, the respondent had lodged a complaint.



WEB COPY

4. There are totally five accused persons, of which the petitioners are arrayed as A1 to A5 herein. The first accused is the Company, the second accused is the Managing Director and the authorized signatory of the first accused and other accused 3 to 5 herein are the Managing Directors of the first accused Company. The respondent herein caused legal notice as contemplated under Section 138 of Negotiable Instruments Act only to the first and second accused and filed a complaint.

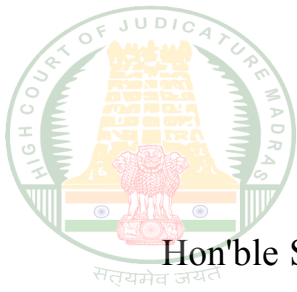
5. The learned counsel for the petitioners would submit that there is no cause of action has arisen to lodge a complaint as against the petitioners, since they were not served with any notices as mandated under Section 138 of the Negotiable Instruments Act. Further, the complainant never whispered about any specific overtact as against the petitioners with regard to their role played in the first accused Company to attract the offences under Section 142 of Negotiable Instruments Act. The respondent simply mentioned that the petitioners are the Managing Directors and they are also involved in the day-to-day affairs of the first accused Company. In support of his contentions, he relied upon several judgments of the Hon'ble Supreme Court of India.



WEB COPY

6. Per Contra, the learned counsel for the respondent would submit that on behalf of the first accused, other Directors placed orders to purchase garments from the respondent and accordingly, the respondent supplied goods. Towards payment of dues, the first accused issued cheques signed by the second accused. All the cheques were presented for collection and were returned dishonoured. The first accused is the Company and other accused are its Directors. The second accused, being the authorized signatory of the first accused had signed the cheques and issued those in favour of the respondent. Once the company was issued statutory notice and other Directors had knowledge about the notice, there is no need to issue separate notices to all the Directors individually. On the notice issued to the company, cause of action arose to initiate the proceedings under Sections 138 of Negotiable Instruments Act as against the Company and its Directors. He further submitted that the respondent specifically averred the specific overtact as against all the accused and as such, the complaint is very much sustainable as against all the accused.

7. In support of his contentions, he relied upon the Judgment of the



CrI.O.P.Nos.2347, 14535 and 14547 of 2023

Hon'ble Supreme Court of India reported in **2015 1 Bankmann (SC) 369** in the case of ***Krishna Texport and Capital Markets Ltd. Vs Ila A.Agrawal and others*** and the Judgment reported in **2022 4 Crimes(SC) 67** in the case of ***S.P.Mani and Mohan Dairy Vs Dr.Snehalatha Elangovan.***

8. Heard the learned counsel on either side and perused the materials placed on record.

9. The petitioners are arrayed as A1 to A5 in all the three complaints lodged by the respondent for the offences punishable under Sections 138 and 142 of Negotiable Instruments Act. The petitioners raised two specific grounds to quash the complaint namely,

(i) The petitioners were not served statutory notices as contemplated under Section 138 of Negotiable Instruments Act.

(ii) There is no specific overtact as against the petitioners in respect of their role played in the first accused Company to attract the offences under Section 142 of the Negotiable Instruments Act.



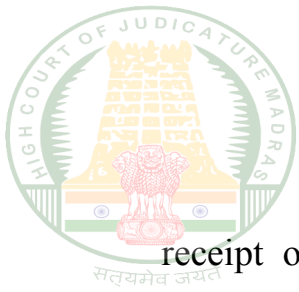
10. The notices were served only to the first and second accused.

Admittedly, A3 to A5 were not served statutory notices as contemplated under Section 138 of Negotiable Instruments Act.

11. In this regard, the Hon'ble Supreme Court of India held in the Judgment reported in **2015 1 Bankmann (SC) 369** in the case of **Krishna Texport and Capital Markets Ltd. Vs Ila A.Agrawal and others** as follows:-

“ 16. In our view, Section 138 of the Act does not admit of any necessity or scope for reading into it the requirement that the directors of the Company in question must also be issued individual notices under Section 138 of the Act. Such directors who are in charge of affairs of the Company and responsible for the affairs of the Company would be aware of the receipt of notice by the Company under Section 138. Therefore neither on literal construction nor on the touch stone of purposive construction such requirement could or ought to be read into Section 138 of the Act. Consequently this appeal must succeed. The order passed by the High Court is set aside. Since the matter was at the stage of considering application for leave to appeal and the merits of the matter were not considered by the High Court, we remit the matter to the High Court for fresh consideration which may be decided as early as possible. Concluding so, we must record that the decision of the Division Bench of the Madras High Court in B.Raman and Ors. Vs. M/s Shasun Chemicals and Drugs Ltd.(supra) was incorrect and it stands overruled. The appeal is allowed in these terms.”

12. Thus, it is clear that other Directors in charge of the affairs of the Company and responsible for the affairs of the Company would be aware of the



receipt of the notice by the first accused Company as contemplated under Section 138 of Negotiable Instruments Act. However, there is absolutely no specific averment as against the accused 3 to 5 herein in the complaint with regard to their day-to-day affairs of the first accused Company. When there is no specific averments as against the accused 3 to 5, it cannot be considered that the accused 3 to 5 are aware of the receipt of the notice by the first accused Company.

13. That apart, the Hon'ble Supreme Court of India held in the Judgment reported in **2023 8 SCC 473** in the case of ***Ashok Shewakramani and others Vs State of Andhra Pradesh and Another***, that the dictum laid down by the Hon'ble Supreme Court of India in the case of ***S.P.Mani and Mohan Dairy Vs Dr.Snehalatha Elangovan***, will have no application as in the present case, the statutory notice was admittedly not served to the accused 3 to 5 and the respondent failed to aver the specific overtact as against them that how they are responsible for the conduct of the first accused Company.

14. Admittedly, the petitioners 3 to 5 are neither the signatories to the cheques nor have actively participated in the day-to-day affairs of the first



accused Company. Therefore, the Judgment relied upon by the learned counsel for the respondent is not applicable to the case on hand.

15. When the petitioners 3 to 5 herein have not actively participated in the day-to-day affairs of the first accused Company, it is mandatory to serve notices to the individual Directors of the first accused Company so that the cause of action arisen to initiate proceedings under Section 138 of Negotiable Instruments Act.

16. A perusal of the complaint lodged by the respondent, it is very clear that the first accused is the Company which placed orders for the supply of garments and the second accused is the authorized signatory of the first accused Company. Insofar as other Directors are concerned, the respondent simply averred that they are also actively taking part in the day-to-day affairs of the Company. Except the averments, there is absolutely no whisper about the role played in the first accused Company to attract the offence under Section 138 of Negotiable Instruments Act.

17. It is necessary to specifically aver in a complaint that at the time when the offence was committed, the person accused was in charge of and



responsible for the conduct of business of the company. Merely being a Director of a Company is not sufficient to make the person liable under Section 141 of the Negotiable Instruments Act. A Director in a company cannot be deemed to be in charge of and responsible for the Company for the conduct of its business. Except the petition in Crl.O.P.No.2347 of 2023, in all the other petitions, the Trial Court has failed to order enquiry as contemplated under Section 202 of Cr.P.C, since all the accused persons are residing outside the jurisdiction of the Trial Court.

18. It is relevant to extract Section 202 (1) of Cr.P.C as follows:-

“ Section 202 (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,—

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200 ”

19. Therefore, the Trial Court ought to have ordered enquiry before



Crl.O.P.Nos.2347, 14535 and 14547 of 2023

the issuance of summons to the accused 1 and 2 herein. The above provisions mandate the Trial Court, in the case where the accused is residing at the place beyond the area of its jurisdiction, to postpone the issuance of process so as to inquire into the case himself or direct an investigation by a police officer or by another person.

20. In view of the above, the complaint in S.T.C.No.1284 of 2022 on the file of the Fast Track Judicial Magistrate at Tirupur is hereby quashed as against the accused 3 to 5 alone. Accordingly, Crl.O.P.No.2347 of 2023 is partly allowed. Consequently, connected Miscellaneous petition is closed. The Trial Court is directed to proceed with the Trial as against A1 and A2 in accordance with law and complete the same, within a period of six months from the date of receipt of a copy of this order.

21. The complaint in S.T.C.Nos.1448 and 1441 of 2022 on the file of the Fast Track Judicial Magistrate at Tirupur are hereby quashed as against all the accused. However, the Trial Court is directed to issue notice as contemplated under Section 202 of Cr.P.C as against A1 and A2 alone to conduct enquiry and thereafter take cognizance and proceed with the Trial as



Crl.O.P.Nos.2347, 14535 and 14547 of 2023

against A1 and A2 alone. Accordingly, Crl.O.P.Nos.14535 and 14547 of 2023
are allowed. Consequently, connected Miscellaneous petitions are closed.

24.03.2025

Internet: Yes
Index: Yes/No
Speaking/Non speaking order
mn



WEB COPY



Crl.O.P.Nos.2347, 14535 and 14547 of 2023

G.K.ILANTHIRAIYAN. J.

mn

To

1. The Fast Track Judicial Magistrate at Tirupur.
2. The Public Prosecutor,
High Court, Madras.

Crl.O.P.Nos.2347, 14535 and 14547 of 2023

24.03.2025