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Crl.OP.No.31849 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2025

CORAM:

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

Crl.O.P.No.31849 of 2024

and

CRL.MP.Nos.18140 and 18142 of 2024

Sumathi

... Petitioner

Vs.

Esakimohan

... Respondent

**PRAYER:** Criminal Original Petition is filed under Section 528 of BNSS, to call for the records in S.T.C.No.39 of 2024 on the file of the learned Fast Track Judicial Magistrate, Nagapattinam, and quash all proceeding against the petitioner.

For Petitioner : Mr.S.P.Vijayaragavan

For Respondent : No Appearance

**ORDER**

This Criminal Original Petition is filed to quash the proceedings  
STC.No.39 of 2024 pending on the file of learned Fast Track Judicial  
Magistrate, Nagapattinam.



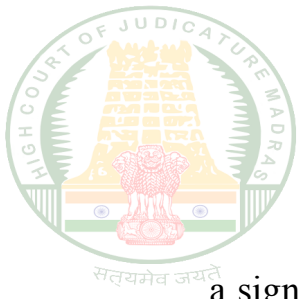
Crl.OP.No.31849 of 2024

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2. The respondent filed a complaint for the offence punishable under Section 138 of Negotiable Instruments Act as against the petitioner alleging that the first accused had entered into a construction agreement with the respondent/defacto complainant. As per the terms of the agreement, the respondent/defacto complainant had made payment to the first accused. However, the construction could not be completed by the first accused and hence, the construction agreement was cancelled. In furtherance of the cancellation of the agreement towards return of the payments received, the first accused issued a cheque.

3. It is further alleged that the said cheque was presented for collection on 01.04.2023 and the same was returned as " Account Blocked Situation Covered in 2125". After causing notice, the respondent lodged a complaint as against the petitioner.

4. The learned counsel appearing for the petitioner submits that the cheque was signed only by first accused out of a joint account maintained along with the petitioner herein. That apart, there is no vicarious liability as against the petitioner to attract the offence under Section 141 of Negotiable Instruments Act. Further, the petitioner is not



CrI.OP.No.31849 of 2024

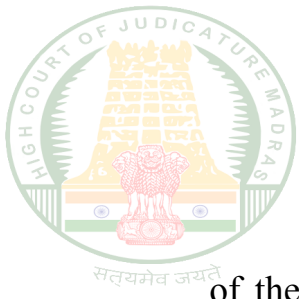
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a signatory of the cheque. The petitioner was not issued any legal notice as complied under Section 138 of Negotiable Instruments Act. Therefore, no cause of action arose to lodge complaint as against the petitioner.

5. Though notice was served on the respondent and his name also printed in the cause-list, no one appeared before this Court either in person or through Advocate.

6. Heard the learned Counsel appearing for the petitioner and perused the materials available on record.

7. A perusal of cheque would show that it was drawn on joint account maintained by the petitioner and her husband. The said cheque was signed only by her husband. After returning of cheque, the respondent caused notice as contemplated under Section 138 of Negotiable Instruments Act. No notice was issued to the petitioner even then the respondent filed a petition under Section 138 of Negotiable Instruments Act as against two accused, in which, the petitioner is arrayed as second accused. However, the second respondent entered into construction agreement with the petitioner's husband. After cancellation



CrI.OP.No.31849 of 2024

WEB COPY

of the said agreement, in order to return some amount, the petitioner's husband had issued cheque. Therefore, the petitioner is not at all liable to be prosecuted for the offence under Section 138 of Negotiable Instruments Act. Since there is absolutely no cause of action as against the petitioner for the offence under Section 138 of Negotiable Instruments Act, the petitioner was not served with any statutory notice contemplated under Section 138 of Negotiable Instruments Act.

8. In view of the above, the present complaint is a clear abuse of process of law and it cannot be sustained as against the petitioner and it is liable to be quashed.

9. Accordingly, the proceedings in STC.No.537 of 2022 on the file of Judicial Magistrate (Fast Track No.II Court) Coimbatore as against the petitioners are hereby quashed and the Criminal Original Petition stands allowed. Consequently, the connected miscellaneous petitions are closed.

29.04.2025

Vv



Crl.OP.No.31849 of 2024

To  
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1. Fast Track Judicial Magistrate, Nagapattinam
2. The Public Prosecutor  
High Court of Madras  
Chennai.



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CrI.OP.No.31849 of 2024

**G.K.ILANTHIRAIYAN, J.**

Vv

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**29.04.2025**