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Crl.O.P.No.4672 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2026

CORAM:

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

Crl.O.P.No.4672 of 2023
and Crl.M.P.Nos.2922 & 2923 of 2023

1. M/s. PESCO BEAM Environmental
Solutions Pvt. Ltd.,
Rep by its Managing Director
A.Subramaniam,
No.12, East Club Road,
Shenoy Nagar,
Chennai – 600 030.

2. A.Subramaniam,
S/o. P.S.Anantharaman
Managing Director,
M/s. PESCO BEAM Environmental
Solutions Pvt. Ltd.,
No.12, East Club Road,
Shenoy Nagar,
Chennai – 600 030.

3. A.Shankar,
S/o. P.S.Anantharaman
Director,
M/s. PESCO BEAM Environmental
Solutions Pvt. Ltd.,
No.12, East Club Road,
Shenoy Nagar,
Chennai – 600 030.

..Petitioner(s)

Vs



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R.Bhagawandas Bajaj
S/o. Ramchand Bajaj,
H-1, 'Harrington Courts',
No.99, Harrington Road,
Chetpet, Chennai – 600 031.
Rep by POA Sewak R Bajaj

..Respondent(s)

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records and to quash the proceedings in C.C.No.5619 of 2016 on the file of the learned FTC-III Metropolitan Magistrate, Saidapet, Chennai – 600 015.

For Petitioner(s): Mr.K.Murugan

For Respondent(s): Mr.P.Rajkumar
for Mr.J.Umaidgothi

ORDER

This petition has been filed to quash the proceedings in C.C.No.5619 of 2016 on the file of the learned Metropolitan Magistrate, Fast Track Court -III, Saidapet, Chennai, thereby taken cognizance for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as “the NI Act”) as against the petitioners.

2. The petitioners are arrayed as A1, A2 & A4 in the complaint lodged by the respondent for the offence punishable under Section 138 of the NI Act, alleging that the first accused is the company and the accused 2 to 5 are



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the Directors of the first accused company. They were in need of financial assistance and therefore they approached the respondent to borrow a loan to the tune of Rs.1,20,00,000/-. They also assured to repay the said amount with 12% interest per annum. Accordingly, a sum of Rs.1,20,00,000/- was paid to the accused and after several repeated demands, the accused had issued cheque for a sum of Rs.1,00,00,000/-. It was deposited for collection and the same was returned dishonoured for the reason “funds insufficient”. After causing statutory notice, the respondent filed complaint and the same has been taken cognizance by the trial Court.

3. The learned counsel appearing for the petitioners submitted that there are totally five accused in which the fifth accused died long back. As against the third accused, the entire proceeding has already been quashed by this Court in Crl.O.P.No.17079 of 2019 by an order dated 01.11.2022. He raised three grounds to quash the entire proceeding. The first one is that the complaint was lodged by the Power of Attorney of the respondent. However, no deed was filed and there is no averment that the power holder had full knowledge about the transaction between the petitioners and the respondent. The second one is that according to the complaint, the entire amount was issued by the respondent by cash. However, as per the Reserve Bank of India

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guidelines, more than a sum of Rs.20,000/- cannot be dealt with by cash. The

last one is that the power of attorney is neither a payee nor holder in due course of the cheque to lodge the complaint under Section 138 of the NI Act. Hence, he prayed to quash the entire proceedings.

4. Per contra, the learned counsel appearing for the respondent submitted that all the grounds raised by the petitioners can be gone through during trial by the trial Court. While pending the complaint, the respondent also filed petition seeking amendment. However, it was withdrawn and subsequently, the respondent takes steps to amend the complaint. Therefore, he prayed for dismissal of the quash petition.

5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. On perusal of the complaint, it is revealed that even in the short cause title, the complainant is represented by his Power of Attorney one Sewak R Bajaj. However, a copy of the power deed was not annexed with the complaint while presenting the same before the trial Court. Further, there is absolutely no averments to the effect that the power of attorney is represented



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his principal and he had personal knowledge about the transaction between the complainant and the accused persons. Further in the paragraph No.4 of the complaint, the respondent categorically stated that a sum of Rs.1,20,00,000/- was received by the accused by cash. As per the Reserve Bank of India guidelines, the amount more than a sum of Rs.20,000/- cannot be dealt with by cash. However, according to the respondents a sum of Rs.1,20,00,000/- was received by cash by the accused persons.

7. Further the complainant is represented by his power of attorney. However, it seems that there is no averments to the effect that the power of attorney had full knowledge about the transactions between the accused and the complainant personally. It is relevant to extract the provision under Section 142(a) of the NI Act as follows:-

142. Cognizance of offences.—1 [(1)] Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;



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Accordingly, no Court shall take cognizance of any offence punishable under

Section 138 of the NI Act, except upon a complaint, in writing, made by the payee or, as the case may, the holder in due course of the cheque. In the case on hand, the respondent, who is being the power of attorney of the complainant, is neither a payee nor the holder in due course of the cheque. Therefore, the power of attorney has no locus to lodge complaint on behalf of his principal.

8. In view of the above discussions, the proceeding initiated as against the petitioners for the offence punishable under Section 138 of the NI Act cannot be sustained and is liable to be quashed. Accordingly, the impugned proceedings in C.C.No.5619 of 2016 on the file of the learned Metropolitan Magistrate, Fast Track Court -III, Saidapet, Chennai, is hereby quashed and the Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

09.03.2026

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

1. The Metropolitan Magistrate,
Fast Track Court -III, Saidapet,
Chennai.



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G.K.ILANTHIRAIYAN. J,

rts

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