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Crl.O.P.Nos.31884 of 2022 & 7632 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2026

CORAM

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

Crl.O.P.Nos.31884 of 2022 & 7632 of 2023

and

Crl.M.P.Nos.19589 & 19591 of 2022 and 4867 & 4869 of 2023

Crl.O.P.Nos.31884 of 2022

P.R.Perumal
Managing Director and CEO-ITCOT Limited,
Murugesan Naicker Complex,
50A, Greams Road,
Chennai - 600 006.

.... Petitioner

Vs.

M/S.Aarthi Agencies
Rep By T.Marappan
S/o.Late Thirumalai Gounder,
as holder in due course for M/s. Aarthi Agencies,
Door No.195, Kollapatti,
Animoor Village and Post,
Thiruchengode Taluk,
Namakkal District.

.... Respondent

Crl.O.P.Nos.7632 of 2023

1.T. Marappan
2.M.Vadivelan

.... Petitioners

Vs.

1.State of Tamilnadu,
Rep.By The Inspector of Police,
F4 Thousand Lights Police Station,
Chennai.



Crl.O.P.Nos.31884 of 2022 & 7632 of 2023

2.P.R.Perumal
Managing Director and CEO-ITCOT Limited,
50A, Greams Road,
Chennai - 600 006.

.... Respondents

Prayer in W.P.No.31884 of 2022: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the proceeding in STC.No.174 of 2022 on the file of Learned Judicial Magistrate (Magisterial Level) Fast Track Court, Tiruchengodu.

Prayer in W.P.No.7632 of 2023: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to quash the final report in CC.No.1475 of 2023 on the file of the Learned XIV Metropolitan Magistrate, Egmore, Chennai as the same is an abuse of process of law

In W.P.No.31884 of 2022

For Petitioner : Mr.K.V.Muthu Visakan
For Respondent : Mr.S.Karthikeyan

In W.P.No.7632 of 2023

For Petitioners : Mr.S.Karthikeyan
For R1 : Mr.A.Gopinath
Government Advocate (Crl.Side)
For R2 : Mr.K.V.Muthu Visakan

COMMON ORDER

Crl.O.P.No.31884 of 2022 has been filed to quash the proceedings in S.T.C. No.174 of 2022 on the file of the Judicial Magistrate (Magisterial Level), Fast Track Court, Tiruchengode and Crl.O.P.No.7632 of 2023 has been filed to quash the final report in C.C.No.1475 of 2023 on the file of the XIV Metropolitan Magistrate, Egmore, Chennai.



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2. The petition in Crl.O.P.No.31884 of 2022 has been filed by the accused in the complaint lodged by the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act. The case of the respondent is that his wife is the proprietrix of the concern and has been acquainted with the petitioner for the past fifteen years. While being so, on 23.04.2022, the respondent lent a sum of Rs.25 Lakhs in cash to the petitioner. At the time of borrowal of the said loan, the petitioner handed over a unfilled signed cheque. Thereafter, on instructions of the petitioner, the cheque was filled up and presented for collection. However, the same was returned dishonoured with the endorsement “Payment Stopped by the Drawer”. After causing a statutory notice, the respondent filed a complaint and the same has been taken cognizance by the Trial Court.

3. The petition in Crl.O.P.No.7632 of 2023 has been filed to quash the entire proceedings in C.C.No.1475 of 2023, initiated by the second respondent for the offences punishable under Sections 380, 420, 465, 468 & 471 of IPC read with Section 120(b) of IPC. The second respondent herein is none other than the petitioner in Crl.O.P.No.31884 of 2022 and the petitioner herein is none other than the respondent in Crl.O.P.No.31884 of 2022. The second respondent lodged a complaint alleging that the cheque was stolen by the petitioner and



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thereafter misused, while, on the other hand, proceedings under Section 138 of the Negotiable Instruments Act were initiated on the basis of the dishonour of the said cheque, which forms the cause of action in Crl.O.P.No.31884 of 2022. Therefore, this Court is inclined to pass a common order in both petitions.

4. The learned counsel for the petitioner in Crl.O.P.No.31884 of 2022 submitted that the loan amount was lent by one T.Marappan, whose wife is the Proprietrix of the respondent concern. However, the said T.Marappan, as a holder in due course of the cheque, has lodged the complaint. The alleged cheque was stolen by the respondent and was presented for collection as if the petitioner borrowed a sum of Rs.25 Lakhs. Therefore, the said complaint preferred by the said T.Marappan is not maintainable. Even assuming that the alleged cheque was issued for security and the same was filled up by the said T.Marappan, including the date, amount and etc., and presented for collection. The cheque was originally issued in favour of the respondent, which is a proprietrix concern and the same cannot be made over in favour of T.Marappan and as holder in due course of the cheque, the said T.Marappan has no *locus standi* to maintain the complaint as he is neither an authorised signatory nor an agent of the respondent. The petitioner was not even present at the relevant point of time and he was in another State attending a conference. Hence, the petitioner never borrowed any loan and did not issue any cheque. Therefore, the



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alleged cheque was stolen and subsequently misused by the respondent to initiate proceedings under Section 138 of the Negotiable Instruments Act.

5. Per contra, the learned counsel for the petitioner in Crl.O.P.No.7632 of 2023 and the respondent in Crl.O.P.No.31884 of 2022 submitted that the cheque was presented for collection on 14.07.2022 and was returned dishonoured on 15.07.2022 with the endorsement “Payment Stopped by the Drawer”. Thereafter, on 20.07.2022, the respondent caused a statutory notice as contemplated under Section 138 of the Negotiable Instruments Act, which was received by the petitioner on 23.07.2022. On receipt of the said notice, the respondent lodged complaint before the first respondent in Crl.O.P.No.7632 of 2023 and the same was registered in Crime No.157 of 2022. However, the said complaint was lodged only on 27.07.2022. Thus, it is contended that the complaint was lodged only after receipt of the statutory notice and it is a clear attempt to escape from the clutches of proceedings under Section 138 of the Negotiable Instruments Act, by falsely alleging that the cheque had been stolen by the respondent. It is further submitted that the petitioner received an SMS from the Canara Bank, thereby informing that the alleged cheque was presented for collection. The petitioner did not have any transaction with the respondent and as such, immediately sent an e-mail to the bank to stop the payment. Thereafter, the petitioner realised that his mother is

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one of the Trustees of one KIOT Educational Trust, which runs an Engineering College in the name of Knowledge Institute of Technology, in which the respondent was serving as President. Taking advantage of the absence of petitioner, the respondent visited the petitioner's house to meet his mother and at that juncture, the petitioner had kept a signed cheque, without mentioning the name of the payee and date, at his ancestral house for the purpose of purchasing a property. During the said visit, the respondent had stolen the said cheque and misused the same by filling in the particulars and presenting it for collection and thereafter initiated proceedings under Section 138 of the Negotiable Instruments Act. Therefore, the complaint lodged by the petitioner is only to escape from the clutches of proceedings under Section 138 of the Negotiable Instruments Act.

6. The learned Government Advocate (Crl.Side) submitted that after completion of the investigation, the first respondent filed a final report and the same has been taken cognizance in C.C.No.134 of 2023. He further submitted that there are specific allegations as against the petitioner in Crl.O.P.No.7632 of 2023 to attract the offences punishable under Sections 380, 425, 465, 468 & 471 of IPC read with 120(b) of IPC.



7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. On perusal of the records and the submissions made by the learned counsel on either side, it is seen that the respondent in Crl.O.P.No.31884 of 2022 and his wife, who is the Proprietrix of M/s.Aarthi Agencies, and the mother of the petitioner are the Trustees of KIOT Educational Trust. There were disputes between them in respect of money transactions. According to the petitioner, the signed cheque, which was available in connection with the Trust, has been misused by the respondent for initiating the proceedings under Section 138 of the Negotiable Instruments Act. It is the specific case of the petitioner that the cheque was filled up by the respondent, including the date and the name of the payee, viz., M/s.Aarthi Agencies. M/s.Aarthi Agencies is a proprietrix concern and the wife of the said T.Marappan, one Madhavi is the Proprietrix. It is further seen that except for the signature and the amount, the remaining particulars in the cheque were filled up by the respondent. The cheque was presented for collection and the same was returned dishonoured with the endorsement "Payment Stopped by Drawer". Thereafter, the respondent caused a statutory notice dated 27.02.2022 on the instructions of T.Marappan i.e., the husband of the Proprietrix of M/s.Aarthi Agencies. In the said notice, he did not even whisper that the cheque was made over in his favour. In fact, the said T.Marappan represented M/s. Aarthi Agencies. After causing a statutory notice, 7/14



the respondent filed a complaint to initiate proceedings under Section 138 of the Negotiable Instruments Act.

9. A perusal of the complaint reveals that M/s.Aarthi Agencies is represented by T.Marappan, who claims to be the holder in due course of the cheque on behalf of the said M/s.Aarthi Agencies. In the sworn statement, the said T.Marrappa has stated that a sum of Rs.25 Lakhs was lent to the petitioner by his wife. Therefore, it is evident that the amount was not paid by the said T.Marappan and without any consideration, the cheque was made over in favour of the said T.Marappan. A “holder in due course” as defined under Section 9 of the Negotiable Instruments Act, means any person who, for consideration, becomes the possessor of a negotiable instrument. In this regard, the learned counsel for the petitioner relied upon the Judgment of the Hon’ble Supreme Court of India reported in **2018 SCC Online Mad 13858** in the case of **Abdul Mutallib Vs. Noorjahan**, wherein the Hon’ble Supreme Court of India held as follows :

“9. Section 138 of the act lays down as under :

“138.Dishonour of cheque for insufficiency, etc., of funds in the account :- Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is



returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds that amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years ; or with fine which may extend to twice the amount of the cheque, or with both :

Provided that nothing contained in this section shall apply unless -

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier ;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice ; in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid ; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation .- For the purpose of this section, “debt of other liability” means a legally enforceable debt or other liability”.



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Proviso (b) of Section 138 stipulates that nothing in the Section 138 shall apply unless the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing.”

10. Thus, it is clear that a “holder in due course” refers to a person who, for consideration, becomes the possessor of a promissory note, bill of exchange or cheque. However, in the present case, the said T.Marappan did not pay any consideration for the said cheque and it is his wife who allegedly lent the amount to the petitioner. Therefore, the said T.Marappan cannot maintain the complaint as if he is a holder in due course of the cheque. Further, according to the provision under Section 142(1)(a) of the Negotiable Instruments Act, no Courts shall take cognizance of any offence punishable under Section 138 of the Negotiable Instruments Act except upon a complaint in writing made by the payee or the holder in due course of the cheque. That apart, there was money dispute between the Trustees. Therefore, the alleged cheque was misused by the respondent and proceedings were falsely initiated under Section 138 of the Negotiable Instruments Act.



11. On the other hand, the petitioner lodged a complaint alleging that the cheque was signed and was left at his ancestral house for the purpose of purchasing a property, and that the same was stolen by the respondent and misused for initiating proceedings under Section 138 of the Negotiable Instruments Act. However, a perusal of the entire complaint reveals that it is quite unnatural and only in order to escape from the clutches of proceedings under Section 138 of the Negotiable Instruments Act, a false complaint has been lodged by the petitioner alleging theft of the cheque. Thus, it is evident that both parties, owing to their money disputes, initiated proceedings against each other i.e., one under Section 138 of the Negotiable Instruments Act and the other by lodging a criminal complaint alleging theft and misuse of the cheque, with an intention to wreak vengeance against each other.

12. In view of the foregoing discussions, this Court is of the considered opinion that the complaint in Crl.O.P.No.31884 of 2022 is not maintainable, since the said T.Marappan does not qualify either as a payee or a holder in due course within the meaning of the Negotiable Instruments Act. Consequently, the very cognizance taken for the offence under Section 138 of the Negotiable Instrument cannot be sustained and is liable to be quashed. Insofar as Crl.O.P.No.7632 of 2023 is concerned, this Court finds that the complaint lodged by the petitioner alleging theft of cheque and consequential offences



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appears to be a counterblast to the proceedings initiated under Section 138 of the Negotiable Instruments Act. It is evident that the said complaint has been lodged only with an intention to escape from the legal consequences arising out the dishonour of the cheque. Therefore, the continuation of the proceedings in C.C.No.1475 of 2023 on the file of the XIV Metropolitan Magistrate, Egmore, Chennai, would amount to an abuse of process of law.

13. Accordingly, the proceedings in STC No.174 of 2022 on the file of the Judicial Magistrate, Fast Track Court, Thiruchengode and proceedings in C.C.No.1475 of 2023 on the file of the XIV Metropolitan Magistrate, Egmore, Chennai, are hereby quashed and the Criminal Original Petitions stand allowed. Consequently, connected miscellaneous petitions are closed.

03.03.2026

Index: Yes/No
Internet: Yes/No
Neutral Citation : Yes/No
Speaking/Non-speaking order

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1.The XIV Metropolitan Magistrate,
Egmore, Chennai.

2.The Judicial Magistrate (Magisterial Level)
Fast Track Court, Tiruchengode.

3.The Inspector of Police,
F4 Thousand Lights Police Station,
Chennai.

4.The Public Prosecutor,
High Court of Madras,
Chennai.



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G.K.ILANTHIRAIYAN, J.

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