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*Crl.O.P.No.3562 of 2023*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.04.2026

Pronounced on: 13.05.2026

CORAM:

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

Crl.O.P.No.3562 of 2023 and  
Crl.MP.No.2218 of 2023

S.Ramamoorthy

... Petitioner

Vs.

M/s.T.Jayaraman,  
Registered Partnership Firm,  
Rep.by its Power of Attorney Agent A.S.Kannan,  
No.9, K.R.Koil Street,  
1<sup>st</sup> Floor, West Mambalam,  
Chennai 600 033

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Cr.P.C. to call for the records and quash the proceedings in STC.No.7860 of 2022 in the Court of the learned Metropolitan Magistrate, Fast Track Court-III, At Saidapet, Chennai for offences punishable under Sections 138 and 142 of the Negotiable Instruments Act, 1881.

For Petitioner : Mr.P.Palaniandy

For Respondent : Mr.P.L.Narayanan,  
Senior Counsel  
for Mr.E.Hariharan



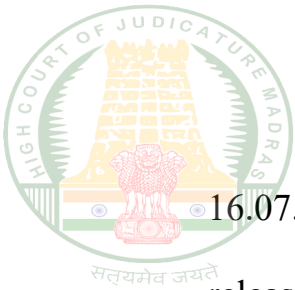
*Crl.O.P.No.3562 of 2023*

## **ORDER**

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This criminal original petition has been filed praying to quash the proceedings in STC.No.7860 of 2022 on the file of the Court of the learned Metropolitan Magistrate, Fast Track Court-III, At Saidapet, Chennai for the offences punishable under Sections 138 and 142 of the Negotiable Instruments Act, 1881.

2. The petitioner is the accused in the complaint lodged by the respondent for the offence punishable under Section 138 of NI Act alleging that the accused, a builder by profession, was indebted to the complainant to the extent of Rs.9,27,72,333/- together with interest at the rate of 18% per annum and the principal amount of Rs.5,54,00,000/- from 04.05.2018 pursuant to arbitration award dated 22.10.2018. The award came to be passed on the borrowal of Rs.5,54,00,000/- by the accused while depositing original sale deed in respect of a third party immovable property bearing document No.397 of 1964. On the basis of the arbitration award dated 22.10.2018 in award No.5 of 2018, the accused was directed to pay a sum of Rs.9,27,72,333/- in favour of the complainant. Subsequent to the award, the complainant filed execution petition. At that juncture, the accused approached the complainant on



*Crl.O.P.No.3562 of 2023*

16.07.2019 and agreed to pay a sum of Rs.1,65,00,000/- against the release of the third party's property document and issued cheque dated 15.07.2019. It was presented for collection. However, it was returned dishonoured for the reason 'funds insufficient'. After issuing statutory notice, the respondent initiated proceedings under Section 138 of NI Act and the same has been taken cognizance by the trial court.

3. The learned counsel for the petitioner would submit that even according to the respondent, on the basis of the award passed by the arbitrator, the accused issued cheque for a sum of Rs.1,65,00,000/- to release the third party's property documents. The very arbitration award itself was challenged before this Court in Arbitration OP.Nos.381 and 382 of 2022 and the same was set aside by this Court by a common order dated 29.04.2024. In fact, in the arbitration award, the accused was set ex parte. Further, the petitions under Section 34 of Arbitration and Conciliation Act challenging the arbitration award were filed before this Court even before issuance of the alleged cheque. Therefore, the cheque was not at all issued for any legally enforceable debt. Further, the cheque was not issued in favour of the partnership firm and it was issued in the individual capacity of one, T.Jayaraman. Further, the said cheque was

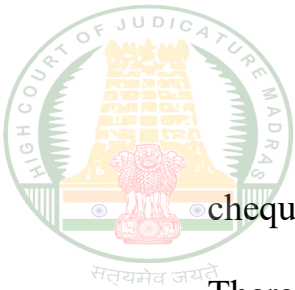


*Crl.O.P.No.3562 of 2023*

presented for collection in the account held by the partnership firm.

Thereafter, the partnership firm filed complaint representing through its power of attorney in the year 2019 itself. Though on the date of filing the suit, both the partners were very much alive, thereafter one of the partners died on 01.04.2020 and thereafter the same power of attorney had given his sworn statement before the trial court and on the basis of which, the trial court had taken cognizance and issued summons for the offence punishable under Section 138 of NI Act. Once the partner died, the partnership firm ceased to exist and suppressing the fact that one of the partners died, the power of attorney had given his sworn statement to proceed with the case against the accused. Therefore, the trial court ought not have taken cognizance on the sworn statement of the power of attorney who had no power to conduct the case since one of the partners died and the partnership firm itself became defunct.

3.1 He would further submit that on receipt of the statutory notice, the accused issued categorical reply to the extent that the cheque was not issued for any legally enforceable debt and the accused was in no need to issue cheque since already the accused challenged the arbitration award and the same was set aside by this Court. Further, in the alleged



Crl.O.P.No.3562 of 2023

cheque itself, it is clearly mentioned that the cheque is of the year 2015.

Therefore, the cheque was misused by the complainant for initiation of the proceedings under Section 138 of NI Act. The acknowledgement which is produced by the complainant dated 16.07.2019 is not that of the accused. Therefore, the entire impugned proceedings is nothing but clear abuse of process of law and it cannot be sustained. As such, the learned counsel for the petitioner prayed for quashing the impugned proceedings.

4. Per contra, the learned Senior Counsel appearing for the respondent filed counter on behalf of the respondent and submitted that even after the demise of one of the partners, the partnership firm survives and the power of attorney can represent on behalf of the partnership firm. After the demise of one of the partners on 01.04.2020, on the very same day, other partners were inducted to the partnership firm called M/s.T.Jayaraman and thereafter the power of attorney had given his sworn statement to take cognizance on the complaint lodged by the respondent for the offence punishable under Section 138 of NI Act. In support of his contention, he relied upon the judgment of the Hon'ble Division Bench of this Court in the case of ***K.A.Meeran Mohideen Vs. Sheik Anjad and others*** reported in ***MANU/TN/5483/2024***, in which it



*Crl.O.P.No.3562 of 2023*

was held that in order to reach the conclusion that a power of attorney deed executed by several persons, which cannot be said to be coupled with interest, is not automatically terminated on the death of one of the principals. The question of termination would necessarily depend on the facts and circumstances of each case. It was further held that the termination will necessarily be, if it is shown that the intention of the parties was that the power was to continue even after death of one of the executants as laid down by the Calcutta High Court, the agency will continue till the object sought to be achieved is complete. In the case on hand, the power of attorney was executed only to conduct the case on behalf of the partnership firm. Therefore, even though one of the partners died, the partnership firm survives to proceed with the case and as such, the power of attorney can very well proceed with the case on behalf of the principal.

4.1 He further submitted that even assuming that the power holder has no power to proceed with the case, it is only curable defect and at any time it can be cured by means of a formal application for amendment. In support of this contention, the learned Senior Counsel relied upon the judgment of the Hon'ble Supreme Court of India in the



Crl.O.P.No.3562 of 2023

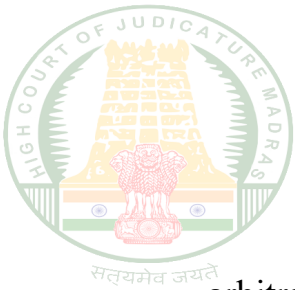
case of ***Bansal Milk Chilling Center Vs. Rana Milk Food Private***

***Limited and Others*** reported in ***MANU/SC/0985/2025***, in which it was

held as follows:

8. *The issue, whether a criminal court has power to order amendment of a complaint filed under Section 200 of the Cr.P.C., is no longer res integra. In S.R. Sukumar v. S. Sunaad Raghuram<sup>1</sup>, this Court held as under:-*

*“19. What is discernible from U.P. Pollution Control Board case is that an easily curable legal infirmity could be cured by means of a formal application for amendment. If the amendment sought to be made relates to a simple infirmity which is curable by means of a formal amendment and by allowing such amendment, no prejudice could be caused to the other side, notwithstanding the fact that there is no enabling provision in the Code for entertaining such amendment, the court may permit such an amendment to be made. On the contrary, if the amendment sought to be made in the complaint does not relate either to a curable infirmity or the same cannot be corrected by a formal amendment or if there is likelihood of prejudice to the other side, then the court shall not allow such amendment in the complaint.”*



*CrI.O.P.No.3562 of 2023*

4.2 The learned Senior Counsel further submitted that though

arbitration award was set aside subsequently by this Court, it was on technical ground since the arbitrator was appointed unilaterally. However, the cheque was not issued on the basis of the arbitration award. It was issued while partially discharging the liability of the accused for the borrowal of Rs.5,54,00,000/-. That apart, the grounds raised by the petitioner can be considered only before the trial court by letting in evidence and the question of facts cannot be considered by this Court under Section 482 of Cr.P.C. Hence, he prayed for dismissal of this criminal original petition.

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

6. On perusal of the complaint lodged by the respondent, it is revealed that the accused allegedly borrowed a sum of Rs.5,54,00,000/- by depositing original sale deed vide document No.397 of 1964 owned by a third party. He also agreed to pay interest at the rate of 18% per annum. However, the accused committed default and as such, the complainant initiated arbitration proceedings. The arbitrator passed award No.5 of



*Crl.O.P.No.3562 of 2023*

2018 dated 22.10.2018 thereby directing the accused to pay a sum of

Rs.9,27,72,333/- in favour of the complainant. In order to avoid the

execution proceedings, the accused agreed to pay sum of

Rs.1,65,00,000/- in order to release the third party's document on

16.07.2019. After presentation of the said cheque, it was returned

dishonoured for the reason 'funds insufficient'. Therefore, the

complainant issued statutory notice. On receipt of the statutory notice, the

accused issued reply notice dated 14.09.2019. The accused completely

denied the issuance of the cheque, that too on the basis of the award

passed by the arbitrator in award No.5 of 2018 dated 22.10.2018. The

accused did not have any admitted liability. Due to longstanding

relationship from the year 1984 between the accused and the

complainant, the complainant misused the various bank papers and

cheques which were issued for security purpose. Even after closure of

loans, the complainant initiated arbitration proceedings. On receipt of the

statutory notice, the accused found that the cheque in question relates to

the cheque book which was used in the month of February 2015 and it

would not have been issued in the month of July 2017, that too for a sum

of Rs.1,65,00,000/-. It was not issued on the basis of the arbitration award

since the arbitration award itself was challenged before this Court in

Arb.OP.Nos.381 and 382 of 2022 on 11.02.2019 itself. When the

Page 9 of 16



Crl.O.P.No.3562 of 2023

arbitration award was under challenge, the accused would not have issued the cheque for a sum of Rs.1,65,00,000/-. In fact, the arbitration award was set aside by this Court. The relevant portion of the order passed by this Court in Arb.OP.Nos.381 and 382 of 2022 dated 29.04.2024 is extracted hereunder:

*“25. In the present case, without any consent from the petitioners, the respondent proceeded with the arbitration and appointed the Arbitrator unilaterally. In spite of the objection made by the petitioners, the respondent had proceeded with the Arbitration proceedings and the learned Arbitrator did not afforded any opportunity to the petitioner to contest the matter. Therefore, the petitioner did not have any opportunity to file the counter and contest the matter. Even if the petitioner had filed the counter and contested the matter, the present award is still liable to be set aside for violation of the provision under Section 12(5) of the Act. But the learned Arbitrator has proceeded with the matter and passed the ex parte award. Further, admittedly, in writing, the petitioner had not expressly waived the applicability of Section 12(5) of the Act. Taking all the above points into consideration, this Court is of the considered view that the present award is liable to be set aside for the violation of the provision under Section 12(5) of the Act. Further in the present case, it appears that the award has been passed without giving any*



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Crl.O.P.No.3562 of 2023

*opportunity to the petitioner and therefore, the award is suffered with the violation of principles of natural justice also.*

*26. For all the reasons assigned above, this Court is of the view that the present award is not sustainable under law and the same is liable to be set aside as it is against the public policy of India and violates the principles of natural justice.*

*27. In the result, these Arbitration Original Petitions are allowed and the Award dated 22.10.2018 passed by the learned Arbitrator is set aside. No costs. Consequently, the connected applications are also closed.”*

7. That apart, on perusal of the cheque, it is revealed that it was of the month of February/March 2015. It shows that the cheque was issued for some other purpose in the year 2015 and it was misused by the complainant in the year 2019. The cheque was issued in the name of one, T.Jayaraman who was one of the principals of the partnership firm called M/s.T.Jayaraman. It was issued in favour of the partnership firm called M/s.T.Jayaraman. In fact, on perusal of the award passed in award No.5 of 2018, the arbitration proceedings was initiated by the partnership firm M/s.T.Jayaraman represented by its Managing Partner T.Jayaraman. However, the cheque was presented in the firm account i.e.



*Crl.O.P.No.3562 of 2023*

M/s.T.Jayaraman. Thereafter the partnership firm initiated proceedings under Section 138 of NI Act. Therefore, when the cheque itself was not issued in favour of the partnership firm, the partnership firm cannot initiate any proceedings under Section 138 of NI Act to punish the accused. The complainant is not party to the negotiable instrument as the complainant is neither the payee nor holder in due course. Complaint under Section 138 of NI Act can be filed only by the payee of the dishonoured cheque or by the holder in due course as mandated under Section 142 of NI Act.

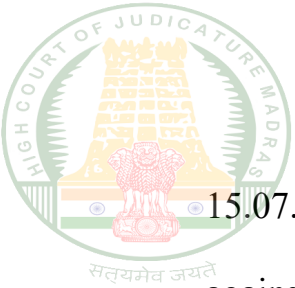
8. Further, no prudent person issues a cheque for a sum of Rs.1,65,00,000/-, that too after challenging the very basis for issuance of cheque in the award passed in award No.5 of 2018. The said award was challenged before this Court as early as on 11.02.2019 itself. After challenging the award, the accused would not have issued the cheque towards discharging partial liability. Admittedly the complaint was lodged by the partnership firm M/s.T.Jayaraman in the year 02.11.2019. On the date of the lodgment of complaint, both the partners were very much alive, but before taking cognizance of the complaint, one of the partners T.Jayaraman died on 01.04.2020. Thereafter the partnership firm



*Crl.O.P.No.3562 of 2023*

represented by its power of attorney lodged complaint. After the demise

of one of the partners, the power holder had sworn statement before the trial court to take cognizance on the complaint. Though the learned Senior Counsel produced the proof for the induction of new partners in the partnership firm M/s.T.Jayaraman, the respondent failed to produce any power of attorney document that was executed to appoint the power holder as the new power of attorney to deal with the proceedings initiated under Section 138 of NI Act. However, as held by the Hon'ble Division Bench of this Court, the question of termination would necessarily depend on the facts and circumstances of each case. However, as stated supra, the accused categorically rebutted the initial presumption arising under Section 139 of NI Act by way of reply notice. The other circumstances are also clear which are pointed out by the learned counsel for the accused, which would clearly rebut the presumption under Sections 118 and 139 of NI Act. The cheque was of February / March 2015. Further, the cheque was issued on the basis of the award passed in award No.5 of 2018 in order to redeem the deposit of title deed to the tune of Rs.1,65,00,000/-. Even before the date of issuance of the cheque i.e. 15.07.2019, the accused challenged the very arbitration award before this Court as early as on 11.02.2019 in Arb.OP.Nos.381 and 382 of 2022. Therefore, the accused would not have issued the cheque dated



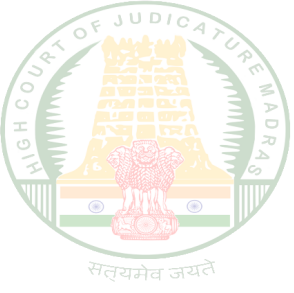
*Crl.O.P.No.3562 of 2023*

15.07.2019 to discharge his partial liability towards the award passed against him. Subsequently, the very award itself was set aside by this Court by order dated 29.04.2024 in Arb.OP.Nos.381 and 382 of 2022. In overall circumstances, the entire initiation of proceedings under Section 138 of NI Act is nothing but clear abuse of process of law and it cannot be sustained.

9. In view of the above discussion, this criminal original petition is allowed and the entire impugned proceedings is quashed. Consequently, connected miscellaneous petition is closed.

13.05.2026

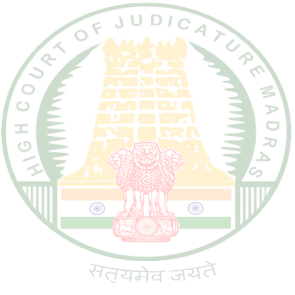
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*Crl.O.P.No.3562 of 2023*

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The learned Metropolitan Magistrate, Fast Track Court-III, At Saidapet,  
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*Crl.O.P.No.3562 of 2023*

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

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Crl.O.P.No.3562 of 2023

13.05.2026

Page 16 of 16