

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.07.2015

DELIVERED ON : 27.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.O.P.No.18028 of 2015
and M.P.Nos.1 and 2 of 2015

Atulsha ... Petitioner/Accused.

Vs

Jai Shri Trading Corporation
Rep by Jasrai M.Khandelwal
No.12A, Vijai Centre
No.65, Oppanakara Street
Coimbatore 01. ... Respondent/Complainant.

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.142 of 2015 pending on the file of Judicial Magistrate No.I/FTC, Coimbatore and quash the same.

For Petitioner Mr.R.Singaravelan for
Mr.A.Kandasamy.

O R D E R

This petition has been filed to call for the records in C.C.No.142 of 2015 pending on the file of the Judicial Magistrate No.I/FTC, Coimbatore and quash the same.

2. For the sake of convenience, the parties will be referred to as the complainant and the accused.

3. It is the case of the complainant that, the accused is the Proprietor of Sree Mahalakshmi Spinners and his wife is the Proprietrix of Sree Mahalakshmi Dhurvash Textiles and that, both of them had purchased synthetic sarees and dress materials from the complainant under Invoice Nos.42, 43, and 44 and they owe a sum of Rs.8,68,349/-. Towards this liability, the accused gave a cheque dated 20.09.2014, which when presented by the complainant, was returned for "Insufficiency of funds" and after issuing the statutory notice on 15.10.2014, the complainant lodged a complaint before the Judicial Magistrate No.1, Coimbatore in C.C.No.142 of 2015, challenging which the accused is before this Court.

4. Mr.Singaravelan, learned counsel for the accused submitted that, the impugned cheque was issued by Mr.Atulsha as Proprietor of Sree Mahalakshmi Spinners, for the debt of Sree Mahalakshmi Durvesh Textiles, owned by the wife of the accused and therefore, a prosecution under Section 138 of the Negotiable Instruments Act cannot be maintained as against the accused, for there is no legally enforceable debt as against him. This argument requires to be stated only to be rejected.

5. A bare reading of Section 138 of Negotiable Instruments Act would show that, a cheque issued for "any debt" which is legally enforceable would attract criminal prosecution, if the other conditions are satisfied. Reference can be profitably made to the judgment of this Court in [K. Krishna Bai v. M/s. Arti Press](#) [1991 LW CrL 515], where this issue has been discussed in detail. In [ICDS Ltd vs. Beena Shabeer and another](#) [(2002) 6 SCC 426], the issue was whether the cheque issued by the wife for the loan taken by her husband could attract prosecution under Section 138 of Negotiable Instruments Act against the wife. The Supreme Court in para 10 held:

"10.The language, however, has been rather specific as regards the intent of the legislature. The commencement of the section stands with the words "Where any cheque". The abovenoted three words are of extreme significance, in particular, by reason of the user of the word "any" the first three words suggest that in fact for whatever reason if a cheque is drawn on an account maintained by him with a banker in favour of another person for the discharge of any debt or other liability, the highlighted words if read with the first three words at the commencement of [Section 138](#), leave no manner of doubt that for whatever reason it may be, the liability under this provision cannot be avoided in the event the same stands returned by the banker unpaid. The legislature has been careful enough to record not only discharge in whole or in part of any debt but the same includes other liability as well. This aspect of the matter has not been appreciated by the High Court, neither been dealt with or even referred to in the impugned judgment.

In view of the above legal position, this petition is devoid of merits and the same is dismissed. Consequently, connected miscellaneous petitions are closed.

gms

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

Judicial Magistrate No.I/FTC,
Coimbatore.

+ 1 cc to M/s.M.Srividhya, Advocate SR 38228

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Cr1.O.P.No.18028 of 2015



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