

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.04.2015
DELIVERED ON : 27.04.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.O.P.No.1831 of 2015
and
M.P.Nos.1 and 2 of 2015

K.Jayalakshmi

... Petitioner

vs.

P.Velu

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in S.T.C.No.267 of 2013 on the file of the Fast Track Court, Magistrate level Trichencode and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.G.Murugendran

O R D E R

Heard the learned counsel appearing for the petitioner.

2. This petition seeks to quash the prosecution under Section 138 of the Negotiable Instruments Act launched against the petitioner by the respondent/ complainant. On a reading of the complaint it appears that, the petitioner was running a Partnership Firm in the name "Narbavi Emu Farms" and in the course of the business transactions, she owed some money to the respondent/complainant. In discharge of the liability, the petitioner/accused gave a cheque for Rs.1,62,300/-, which was dishonoured and after issuance of statutory notice by the respondent/complainant on 02.07.2013, prosecution under Section 138 of the Negotiable Instruments Act was launched in STC No.267 of 2013, which is being challenged in these proceedings.

3. The learned counsel for the petitioner/accused submitted that the respondent/complainant had business dealings with "Narbavi Emu Farms", which is a Partnership Firm, but the cheque has been given by the petitioner/accused from her individual account. He also submitted that the Partnership Firm has not been made an accused and in support of this contention, he relied upon the

judgment of the Supreme Court in Aneeta Hada and others vs. Godfather Travels & Tours Pvt. Ltd. and another [2012(5) CTC 101]. The learned counsel also submitted that the other partner, by name Thirumurugan, has not been impleaded as an accused. It is his further contention that, statutory notice was issued only to the petitioner and not to the Partnership Firm.

4. This Court carefully perused the records and found that, for the discharge of the liability of Emu Farms, in which the petitioner/accused was Managing Partner, the petitioner/accused gave her personal cheque, which was dishonoured. Therefore, the respondent/complainant rightly issued notice to her under Section 138 of the Negotiable Instruments Act. Had the partnership firm given the cheque, then the question of including the Firm also as an accused for fastening criminal liability on the partners may arise. In this case, for the debt of the Firm, the petitioner/accused, who is the Managing Partner of the Firm, gave her personal cheque. Under such circumstances, the arguments of the learned counsel for the petitioner that the other partners should have been impleaded as accused and that the Firm should have been impleaded as an accused, may not hold water.

In the result, this petition is devoid of merits and the same is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gms

To

1. Fast Track Court,
Magistrate level Trichencode.

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.G.Murugendran, Advocate, S.R.No.23028

Cr1.O.P.No.1831 of 2015

KJI (CO)
CA(15/05/2015)