IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10-8-2015

Pronounced on : 19-8-2015

CORAM:

THE HON'BLE MR. JUSTICE P.N.PRAKASH

Criminal Original Petition No.19291 of 2015
M.P.Nos.1 and 2 of 2015

P. Savithri .. Petitioner

Vs.

T.K.Balasubramanian .. Respondent

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure with a prayer to quash the complaint filed in C.C.No.168 of 2015 pending on the file of the learned III Fast Track Court, Magisterial Level, Saidapet, Chennai-15 as the continuance of the same is abuse of process of Court and also in the interest of justice.

For Petitioner : Mr.S.Karthikeyan

O R D E R

For the sake of convenience, the parties will be referred to by their name.

2. It is the case of T.K.Balasubramanian (Complainant) that

P.Savithri (accused) had approached him for financial assistance and he advanced a loan of Rs.5 lakhs to P.Savithri some time in September, 2013. When he demanded repayment of the loan, she issued a cheque dated 27.8.2014 for Rs.5 lakhs, which, when presented for clearance, was returned unpaid for insufficiency of funds. T.K.Balasubramanian issued a statutory notice on 21.10.2014 to P.Savithri under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') and on receipt of the notice, since no payment was made within the prescribed period, T.K.Balasubramanian filed a complaint for an offence under Section 138 of the Act, which was taken on file as C.C.No.168 of 2015 by the III Fast Track Court, Magisterial Level, Saidapet, Chennai, challenging which, P.Savithri is before this Court.

3. Mr.S.Karthikeyan, learned counsel appearing for P.Savithri submitted that the impugned cheque was not signed by P.Savithri, but was signed by her husband S.Padmanabhan on a joint account held by them in the Indian Bank, Adyar Branch, and hence the prosecution against P.Savithri is not maintainable in the light of the law laid down by the Honourable Supreme Court in ***Aparna A.Shah v. Sheth Developers (P) Ltd.,*** reported in ***(2013) 8 SCC 71***.

4. It is no doubt true that the Hon'ble Supreme Court in the

aforesaid Judgment has held that a non-signatory to the cheque, issued from a joint account cannot be prosecuted under Section 138 of Act and therefore quashed the prosecution of the accused in that case.

5. A photo copy of the impugned cheque has been filed along with the typed set of papers. On a perusal of the cheque, it can be seen that the name "R.Savithri" (her maiden name) is printed in the cheque leaf itself and above that there is a signature, from which the name of the person who has signed cannot be deciphered. The cheque was not dishonoured on the ground that the signature in the cheque did not tally with the specimen signature available with the Bank, but on the ground of insufficiency of funds. Therefore, one cannot expect the complainant to suspect that the cheque was not signed by P.Savithri.

6. Mr.Karthikeyan, learned counsel appearing for P.Savithri submitted that after receipt of the statutory notice, a reply notice dated 5.11.2014 was issued by P.Savithri, in which it has been stated that the cheque in question has been issued from a joint account, and that P.Savithri has not signed the cheque.

7. This Court perused the reply notice dated 5.11.2014 in which in paragraph 4 it is stated as follows:

> "4. Further my client would state that the said cheque in question was issued from a Joint Account and

> further my client is not the signatory to the said cheque and all these particulars which are known very well to your client are suppressed and the notice being issued."

The above paragraph has been very cleverly worded in as much as the details of the signatory has not been disclosed.

8. During the course of submission Mr.Karthikeyan stated that the said account is jointly held by P.Savithri and her husband S.Padmanaban, and that, it was S.Padmanaban, who had signed the cheque in question. Had these details been given in the reply notice, then there is some justification for quashing the prosecution against P.Savithri. On the strength of the representation of the learned counsel across the Bar that the signatory is S.Padmanaban and not P.Savithri, this Court cannot quash the prosecution. These are disputed questions of facts, which have to be decided only during trial.

9. When the cheque leaf does not bear the name of S.Padmanaban, it would have been impossible for T.K.Balasubramanian to infer that the cheque was issued from a joint account maintained by P.Savithri and S.Padmanaban. Thus, it appears to the Court that the couple are playing truant with an intention of misleading T.K.Balasubramanian.

10. In a somewhat similar situation, a learned single Judge of the Uttarakhand High Court, in ***Raj Kumar Sethi v. Budhi Prakash***

(Manu/UC/0047/2014) has lamented thus:

> "9. ..... In other words, the husband and wife used the cheque books of their spouses, put their signatures on the same and issued cheques to the people with whom they transacted. The same was a tactic to befool and cheat the innocent people, in whose contact they came and transacted. Raj Kumar Sethi will take a plea that he did not issue any cheque from his cheque book and his wife Neelam Sethi will also take a plea that she did not issue any cheque from her cheque book. This tactic probably may work, or may not work, in cases under Section 138 of the Act, but the same will not help them (Neelam Sethi and Raj Kumar Sethi) from facing the trial for the offence of cheating and forgery under the Indian Penal Code, unless it is shown that they are the joint account holders, authorized to issue such cheques, which does not appear to be the case, for, otherwise, they would not have placed such certificates before this Court."

11. In ***Dashrath Rupsingh Rathod v. State of Maharashtra & Another ((2014) 9 SCC 129)*** in paragraph 20 the Hon'ble Supreme Court has held thus,

> "20. We feel compelled to reiterate our empathy with a payee who has been duped or deluded by a swindler into accepting a cheque as consideration for delivery of any of his property; or because of the receipt of a cheque has induced the payee to omit to do anything resulting in some

> damage to the payee. The relief introduced by Section 138 of the NI Act is in addition to the contemplations in IPC. It is still open to such a payee recipient of a dishonoured cheque to lodge a first information report with the police or file a complaint directly before the Magistrate concerned. If the payee succeeds in establishing that the inducement for accepting a cheque which subsequently bounced had occurred where he resides or ordinarily transacts business, he will not have to suffer the travails of journeying to the place where the cheque has been dishonoured. All remedies under IPC and CrPC are available to such a payee if he chooses to pursue this course of action, rather than a complaint under Section 138 of the NI Act. And of course, he can always file a suit for recovery wherever the cause of action arises dependent on his choosing."

12. From the above, it is evident that even in cases of dishonour of cheques, a prosecution for cheating is not barred. Had P.Savithri honestly informed in the reply notice that the cheque was signed by her husband S.Padmanaban, then one can discount criminal intention. On the contrary, she has taken a very slippery stand, which *prima facie* shows the guilty mind of the spouses. Therefore, even if a prosecution under section 138 of the Act fails on technical grounds, they cannot escape from the clutches of criminal law.

13. In the result, the Criminal Original Petition is devoid of

merits and is accordingly dismissed. Connected miscellaneous petitions are closed.

Index: Yes/No. 19-8-2015

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P.N.PRAKASH, J.

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Pre-Delivery Order in

Crl.O.P.No.19291 of 2015

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