

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.OP No.12066 of 2016

and

CrI.M.P.No.6192 of 2016

Kasthuri

.. Petitioner

Vs

1. T.K. Thiruvankadam

2. R. Kuppusamy

..Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., for direction to call for the records in S.T.C. No.395 of 2015 on the file of Judicial Magistrate No.01, Court, Panruti and quash the same.

For Petitioner :Mr.J. Rajmohan

For R1 :Mr.K. Moorthy

ORDER

This petition has been filed to call for the complainant in S.T.C. No.395 of 2015 on the file of Judicial Magistrate No.I, Panruti and quash the same.

2. Heard the learned counsel for the petitioner and the learned counsel for the first respondent.

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

4. It is the case of T.K.Thiruvankadam (complainant) that R.Kuppusamy (A1) and his wife Kasthuri, (A2) had borrowed Rs.40,00,000/- from him on 01.08.2014 and in discharge of said debt, a cheque dated 08.07.2015 for Rs.44,00,000/- was issued in favour of Thiruvankadam. When Thiruvankadam presented the cheque, it was dishonoured for "insufficiency of funds". Thiruvankadam issued statutory notice under Section 138 of the Negotiable Instruments Act and since the cheque amount was not paid within the stipulated time, he has launched the prosecution in STC No.395/2015 before the Judicial Magistrate No.I, Panruti against the said Kuppusamy and Kasthuri, challenging which Kasthuri is before this Court.

5. Learned counsel for Kasthuri submitted that the cheque has been signed by her husband R.Kuppusamy in a joint account held by them and since she is not a signatory to the cheque,

she cannot be mulcted with criminal liability.

6. Per contra, learned counsel for T.K.Thiruvankadam submitted that the loan was borrowed by R.Kuppusamy and Kasthuri and therefore, Kasthuri cannot be absolved of the liability under section 138 of the Negotiable Instruments Act.

7. In the considered opinion of this Court, it is trite that in a joint account held by two parties, only the signatory of the cheque can be prosecuted and not the other person. In this case, admittedly, the cheque has been signed by R.Kuppusamy and not by Kasthuri.

8. Learned counsel appearing for Kasthuri submitted that the signature in the impugned cheque is that of R.Kuppusamy and not that of Kasthuri.

9. In view of the above, the prosecution against Kasthuri in STC 395/2015 is an abuse of process of law.

In the result, this petition is allowed and the prosecution in STC No.395 of 2015 as against Kasthuri is quashed. The Trial Court order shall proceed as against R.Kuppusamy and complete the trial expeditiously. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS)

/true copy/

Sub Asst. Registrar

To

The Judicial Magistrate No.1, Panruti.

+1 cc to Mr.K.Moorthy,advocate,sr.47406

+1 cc to mr.J.Rajamohan,advocate,sr.47158.

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krd 29/8

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