IN THE HIGH COURT OF JUDICATURE AT MADRAS

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

RESERVED ON :29.11.2017

PRONOUNCED ON :18.12.2017

Crl.OP No.3727 and M.P.No.1 of 2011

and Crl.O.P.No.3729 of 2011

Mrs.Vijayalakshmi .. Petitioner in both Crl.O.Ps.

Vs

Mr.Muthuu .. Respondents in both Crl.O.Ps.

Common Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the entire records and quash the proceedings in C.C.No.107 of 2010 and C.C.No.172 of 2007, on the file of the Judicial Magistrate Court No.VI, Coimbatore as against the petitioner/accused No.2.

For Petitioner :Mr.G.P.Saravana Bhavan in both cases
For Respondent :Mr.P.Nagaraju in both cases

COMMON ORDER

These Criminal Original Petitions have been filed under Section 482 Cr.P.C., to call for the entire records and quash the proceedings in C.C.No.107 of 2010 and C.C.No.172 of 2007, on the file of the Judicial Magistrate Court No.VI, Coimbatore as against the petitioner/accused No.2.

2. The second accused is the petitioner herein.

3. The common facts arising out of both the cases are that:

i) the petitioner is a teacher in local government school for the past several years without any blemishes. The respondent/complainant had falsely cooked up a case against him for the purpose of illegal demand and to defame his reputation.

ii) The cheque bearing No.178454 drawn on ICICI Bank Ltd, Coimbatore-18 for sum of Rs.50,000/- dated 18.03.2008 was misused by the respondent with an ill motive and created a false document in order to gain illegally forcing him to appear before the Judicial Magistrate Court No.VI, Coimbatore. The cheque is issued by her husband earlier as a security which was illegally hold by the respondent without returning the same even after settling all the issues in total.

iii) A portion of house was let on lease to the complainant and further submits that her husband did not approach the complainant with request to purchase the house.

4. Following the procedures, the Judicial Magistrate Court No.VI, Coimbatore have taken a complaint on file in respect of cheque Nos.17853 and 17854 in C.C.No.107 of 2010 and C.C.No.172 of 2017.

5. The learned counsel for the petitioner has submitted that cheque has been issued by the first accused (husband of the second accused) and the same was dishonoured. However, since the petitioner herein is a wife of the first accused and is not a signatory in the cheque taking cognizances by the learned Magistrate for alleged offence under Section 138 of Negotiable Instruments Act does not arise.

6. Per contra, the learned counsel for the respondent-defacto complainant would contend that the defacto-complainant originally has a leasehold right in respect of immovable property owned by the petitioner and the first accused. Subsequently, they entered into memorandum of sale agreement dated 18.02.2006. It was agreed that the prospective purchaser namely defacto-complainant shall pay the amount to the bank and the said amount paid to the bank has to be given credit by the land owner, namely, the petitioner herein and her husband, the first accused. A memorandum of understanding was also entered upon on 18.08.2006. In view of the memorandum of understanding there exist a legally enforceable right against both A1 and A2 for which cheque was issued by the first accused-husband and hence, in view of the existence of the undertaking by the petitioner herein, the cognizances taken by the trial Magistrate cannot be faulted with.

7. After hearing both the parties, as the matter in question is related to common transaction which has let to issuance of two cheques for Rs.50,000/- each for which to C.C.No.107 of 2010 against which Crl.O.P.No.3727 of 2011 and C.C.No.721 of 2007 against which Crl.O.P.No.3729 of 2011 has been filed.

8. The short point that needs to be addressed in both the cases being whether the petitioner/second accused can be fasten with liability under Section 138 of Negotiable Instruments Act?

9. As stated supra, it is admitted case between the parties that the petitioner/second accused is a owner of the immovable property which was taken on lease by the respondent-defacto-complainant. Subsequently, there was a sale agreement for

purchase of the property between the parties on 18.02.2006 as could be seen from the typed set filed in both the cases, it appears that in view of certain points raised by the petitioner/A2. It was agreed between the parties which was reduced into writing by way of memorandum of understanding between the parties herein that the agreement holder shall pay to the bank and the said amount will be returned to the agreement holder-the defacto-complainant as could be seen from the typed set. It also appears that perusing the said understanding dated 18.08.2006, the entire amount due to the bank seems to have been paid and bank also issued letter on 16.10.2006. A copy of the same is filed in the typed set.

10. Furthermore, it is also seen from the typed set that on 26.10.2016 sale deed was also executed by the A1 and A2 in favour of the respondent-defacto-complainant a copy was filed in the typed set.

11. Thus, this Court finds that there was an agreement of sale of the memorandum property owned by the petitioner A1 along with her husband entered into an agreement of sale and there was a memorandum of understanding between the parties on 18.08.2006 and thereafter, it appears sale transaction also been completed on 26.10.2016. It is a case of the respondent/private complainant that pursuant to the memorandum of understanding entered on 18.08.2006, sale deed has been executed by the accused A1 and A2 in his favour and as per the second condition the accused 1&2 have to pay Rs.1,00,000/- to the respondent for the amount, he has paid to the bank to raise the mortgage for the said parties.

12. On perusal of the cheques, in the cases, they were signed only by the husband and not by the wife namely the petitioner/A2. No doubt, it is true that there is pre-existing liability on the husband and wife A1 and A2 but that is only civil liability. A criminal liability under Section 138 of Negotiable Instruments Act can be proceeded only against the person who has issued the cheque and as such the cheques in issue have been issued by the first accused and not signed by the second accused.

13. According to the petitioner, there is a liability that can be enforced in law, however, the liability in the instant case is civil in nature. In respect of criminal liability and the cognizance of criminal proceedings can be initiated only against the person who signed the cheque and none.

14.In this view of the matter while upholding the contentions raised by the learned counsel for the petitioner, the above point is answered informative in favour of the petitioner.

15.Consequently, both these Criminal Original Petitions are allowed taking cognizance in respect of the petitioner A2 by the trial Court is set aside. It is hereby made clear that certain observations made with regard to earlier transaction alleged between the parties in the preceding paragraphs are only for the purpose of determination of these petitions and the trial Court shall proceed the criminal proceedings in C.C.No.107 of 2010 and C.C.No.721 of 2007 as against A1 without being influenced by the observations and finding of this Court in the preceding paragraphs touching upon the transaction alleged between the parties and the said case shall be disposed of un- influenced by said finding in the preceding paragraphs.

16. In the result, these Criminal Original Petitions are allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To

1.The Judicial Magistrate No.5, Salem

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.G.P.Saravana Bhavan, Advocate sr.no.90276

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