IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.03.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Crl.O.P.No.3809 of 2011
and
M.P.Nos.1 and 2 of 2011

Akila Vijayakumar .. Petitioner/Accused 2

vs

Focus M.T. India Pvt. Ltd.,
rep. by its Chennai Unit Head
Vijesh Kumar, V.
No.117/120, 2nd Floor,
13, Green Leaf Layout,
80 Feet Peripheral Road,
4th Block, Koramangala,
Bangalore-34. .. Respondent

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for records in C.C.No.9364 of 2010 on the file of XVIII Metropolitan Magistrate, Saidapet, Chennai 15 and quash the same.

For Petitioner : Mr.G.Ravikumar

For Respondent : No Appearance
(MR.C.P.R.Kamaraj)

ORDER

This Criminal Original Petition has been filed by the petitioner to call for records in C.C.No.9364 of 2010 on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai and to quash the same.

2. The respondent lodged a private complaint under Section 200 of Cr.P.C. before the learned XVIII Metropolitan Magistrate, Saidapet, Chennai for the offence under Section 138 and 142 of Negotiable Instruments Act against the petitioner and her

husband showing them as accused alleging that during 2005 the respondent approached the accused for lease of the premises situated at No.1,2, 12, 2nd Floor, Wllington Estate, No.53, Commander in Chief Road (Ethiraj Salai), Egmore, Chennai and the accused also accepted the offer and leased out the property by execution of a lease deed in favour of the respondent.

3. During 2010, the lease agreement was terminated. Pursuant to the termination, the respondent decided to vacate the leased premises and on 24.3.2010 a full and final settlement was entered into between the respondent and the accused. The respondent has also vacated the premises and handover vacant possession to the accused. As per the agreement, the accused to discharge his liability, issued a cheque drawn at Bank of Baroda, Alwarpet Branch bearing No.026068, dated 24.3.2010 to refund a sum of Rs.15,32,786/-.

4. As per instructions of the accused, the respondent presented the cheque for clearance on 24.3.2010 itself with their banker Kotak Mahindra Bank Limited at Chennai, but the cheque was returned by their banker for reasons of insufficient fund and the same was intimated by the respondent banker by return memo dated 25.3.2010. Immediately, the respondent issued a notice to the accused demanding the accused to pay the cheque amount within 7 days from the date of receipt of the notice.

5. According to the respondent, the accused having knowledge about the account and wilfully gave a cheque to the respondent with an intention to cheat the respondent and the act of the accused in dishonouring the cheque is clearly attracts the provisions contemplated under Section 138 of Negotiable Instruments Act. The cause of action arose at Alwarpet, Chennai where the accused resides and having account at Bank of Baroda, Alwarpet Branch, within the jurisdiction of this Court. Hence, the complaint.

6. The learned Magistrate has taken the cognizance of the offence under Section 138 of Negotiable Instruments Act in C.C.No.9364 of 2010 and issued summons to the accused.

7. The petitioner, who is the wife of the 1st accused seeking to quash the criminal proceedings on the following grounds:

(i) The petitioner has nothing to do with the issuance of cheque No.026068 dated 24.3.2010 drawn on Bank of Baroda, Alwarpet Branch for a sum of Rs.15,32,768/-.

(ii) The petitioner was not signatory of the cheque in question.

(iii) There was no allegation against the petitioner in respect of the dishonour of the alleged cheque.

(iv) The sworn statement of the respondent does not implicate the petitioner.

(v) The petitioner has been falsely implicated in this case.

8. I heard Mr.G.Ravikumar, learned counsel for the petitioner. None appears for the respondent. Perused the materials available on record.

9. On a perusal of the complaint, statutory notice and the alleged cheque, it is seen that the subject matter of cheque bearing registration No.026068 drawn on Bank of Baroda, Alwarpet Branch for a sum of Rs.15,32,768/- was issued by the petitioner's husband on 24.3.2010 towards his liability. The signatory of the cheque was by the petitioner's husband.

10. In order to constitute an offence under Section 138 of Negotiable Instruments Act, in a catena of judgments, the Hon'ble Supreme Court noted the following ingredients, which are required to be fulfilled.

(a) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account;

(b) the cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;

(c) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier;

(d) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

(e) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(f) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days from the date of receipt of the said notice.

Thus, it is only when all the aforementioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under Section 138 of the Negotiable Instruments Act.

11. Admittedly, in the case on hand, the petitioner is the wife of the 1st accused and she filed a petition under Section 482 of Cr.P.C. quashing of the complaint filed under Section 138 of the Act contending that she was not the signatory of the alleged cheque. As stated supra, a perusal of the alleged cheque would show that the petitioner's husband alone is the signatory. Nothing has been produced to show that the account in question is a joint account. It is the say of the petitioner that she has neither drawn nor issued the cheque in question and, therefore, according to her, the complaint against her was not maintainable.

12. The complaint of the respondent was only under Section 138 of the Negotiable Instruments Act and not under Section 420 IPC. Nothing has been shown and was elicited from the respondent to the effect that the petitioner was responsible for the cheque in question. Therefore, in the absence of anything to show that the petitioner was responsible for the cheque in question, the respondent cannot maintain complaint against her.

13. As the petitioner is not a signatory to the cheque, no liability can be fastened upon her for the dishonour of the cheque under Section 138 of the Negotiable Instruments Act. Indisputably, the petitioner herein has not signed the cheque. The cheque has been signed by the husband of the petitioner.

14. In the light of the above, I am of the view that under Section 138 of Negotiable Instruments Act, it is only the drawer of the cheque who can be prosecuted. In the case on hand, admittedly, the petitioner is not a drawer of the cheque and she has not signed the same. The copy of the cheque do not contain the name of the petitioner and the fact remain that the petitioner's husband alone put his signature and the petitioner has been falsely implicated in the complaint. In addition to the same, a bare reading of the complaint as also the sworn statement of the respondent and a bare look at the cheque would show that the petitioner has not signed the cheque. This Court reiterates that it is only the drawer of the cheque who can be made an accused in any proceeding under Section 138 of the Negotiable Instruments Act.

15. For the foregoing reasons, this petition succeeds and is hereby allowed. The further proceedings of C.C.No.9364 of 2010 pending before the learned XVIII Metropolitan Magistrate, Saidpet, Chennai are hereby quashed so far as the petitioner

herein is concerned. By an order dated 15.2.2011, this Court granted interim stay of all further proceedings in C.C.No.9364 of 2010. In view of quashing of C.C.No.9364 of 2010 as against the petitioner, the learned Magistrate is directed to proceed further in accordance with law expeditiously against the co-accused. Consequently, connected miscellaneous petitions are closed.

vs

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

To
1.The XVIII Metropolitan Magistrate,
Saidapet, Chennai-15.

2.The Chief Metropolitan Magistrate,
Egmore, Chennai.

+1cc to M/s.G.Ravikumar, Advocate SR.NO.17198

RR(CO)
sm:23.10.2018

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