

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Cr1.O.P No.14987 of 2010

and

M.P.No.1 of 2010

Mrs.N.Vijayasamundeshwari..... Petitioner

B.Saravanakumar vs. Respondent

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.423 of 2009, pending on the file of the Judicial Magistrate, Avinashi and quash the same.

For Petitioner : Mr.S.N.Thangaraj for
M/s.N.Damodaran

For Respondents : No Appearance

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ORDER

The criminal original petition is filed by the petitioner to call for the records in C.C.No.423 of 2009, pending on the file of the Judicial Magistrate, Avinashi and quash the same.

2. The respondent/complainant herein has filed a complaint in C.C.No.423 of 2009, on the file of the Judicial Magistrate, Avinashi under section 200 of Cr.P.C r/w Sections 138 and 142 of Negotiable Instruments Act against the petitioner/A3 along with two other accused. The petitioner in this criminal original petition is seeking to quash the said complaint lodged by the respondent/complainant in C.C.No.423 of 2009.

3. The case of the respondent/complainant is that the 2nd accused in the said C.C.No.423 of 2009, is the Managing Partner of the 1st accused company by namely M/s.Roots at Tiruppur has borrowed a sum of Rs.4,10,000/- (Rupees four lakh ten thousand only) by way of cash from the respondent/complainant for urgent business needs and expenses of the first accused. On the same day, the second accused on behalf of the first accused have executed a promissory note in favour of the complainant and the second accused have also agreed to pay interest at the rate of 1.5% per month for the said loan amount on demand by the complainant.

4. It is the further case of the respondent/complainant that subsequently the second accused have not turned back to make payment either principal or interest amount till filing of the complaint. On repeated demands and requests made by the respondent/complainant, in order to discharge the above said principal loan amount, the first accused have issued the cheque bearing No.680417, dated 05.05.2009 for a sum of Rs.4,10,000/-, drawn on Karur Vysya Bank Limited, P.N.Road, Tirupur, signed by the second accused as a Managing Partner of the first accused with the consent and knowledge of the third accused.

5. The respondent/complainant further states that as per the request of the second accused, the complainant had presented the above said cheque for collection through his Bank, namely IDBI Bank Limited, Tiruppur, dated 20.10.2009 and the same was returned on 21.10.2009 stating the reason that the 'account was closed' and on the same day and the same was intimated by the complainant's bank.

6. Therefore, the respondent/complainant has filed a complaint in C.C.No.423 of 2009, under Section 200 of Cr.P.C r/w Sections 138 and 142 of Negotiable Instrument Act, before the learned Judicial Magistrate, Avinashi against this petitioner/A3 and along with two other accused.

7. Challenging the said complaint, the petitioner who is the 3rd accused in the said C.C.No.423 of 2009, has filed this Criminal Original Petition for quashing the proceedings in C.C.No.423 of 2009 in respect of the petitioner/A3.

8. It is the case of the petitioner/A3 that the first accused Company's Managing Partner Mr.A.Narendiran, has issued a cheque, who is A2 in C.C.No.423 of 2009 and the further allegation is that the said cheque was issued with the consent and knowledge of this petitioner /A3 which is totally false, since the petitioner is no way connected with the day to day affairs of the first accused company namely M/s.Roots. The petitioner/A3 had already left the partnership of A-1 company on 14.07.2003 itself. Hence, she is no way connected with the issuance of the cheque bearing No.680417 dated 05.05.2009 drawn on the Karur Vysya Bank Limited, P.N.Road, Tirupur for Rs.4,10,000/-.

9. The petitioner/3rd accused also states that as per Section 141 of the Negotiable Instrument Act, if the person committing an offence under Section 138 of Negotiable Instrument Act, every person who, at the time the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence. Since the petitioner, who is the 3rd accused was neither a partner nor an employee of the first accused company namely M/s.Roots and she has also raised another ground saying that as per the provisions of Section 138 of Negotiable Instrument Act, the person who draws a cheque from the accounts maintained by the person and the same was dishonoured, then the person who issued the cheque has to be prosecuted as per the provisions of the Act. Therefore, the petitioner/A3 prayed this Court that the proceedings in C.C.No.423 of 2009, pending on the file of the learned Judicial Magistrate, Avinashi may be quashed.

10. I have heard Mr.N.Damodaran, learned counsel appearing for the petitioner and there was no representation for the respondent and perused the materials available on record.

11. Admittedly, the cheque was issued by the second accused with the signature issued on behalf of the first accused company namely M/s.Roots. The petitioner has produced the partnership

deed enclosed in the typed set of papers vide page No.1, in which originally are 1.Mrs.R.Revathi, 2.Mrs.N.Kavitha, 3.Mrs.Vijaya Samundeswari and 4.Mrs.K.Savithriammal were carrying on business under the name and style of M/s.Roots and thereafter, the above persons were released on 14.07.2003 by way of release deed dated 14.07.2003. Therefore, it is made clear that the petitioner, who is the 3rd accused in the said complaint in C.C.No.423 of 2009 has left from the partnership on 14.07.2003 itself. In the said partnership deed, there are two persons namely, (1) Mr.R.K.Mylswamy and (2) A.Narendiran were the partners of the company and they have been getting remuneration at Rs.3,000/- per month and in page No.3 of the said partnership deed, the net profit in the said company shall be divided among the partners viz., R.K.Mylsamy share of the profit at 50% and A.Narendiran share of the profit at 50%. Therefore, as per the partnership deed dated 14.07.2003, on 14.07.2003 the petitioner viz., N.Vijayasamundeshwari, W/o.A.Narendran was not a partner of the said company.

12. Apart from this, the legal notice dated 24.10.2009 was issued by the respondent/complainant in which the 3rd accused was mentioned as a partner in Old No.46, New No.68, Ram Nagar 4th Street, Tiruppur, while the petitioner was left from the partnership company on 14.07.2003 itself. Hence, a notice was sent to the petitioner/A3 and the same was returned. Because, at the time of issuance of the said notice, the petitioner was not a partner of the said first accused company. Therefore, it is made clear that no notice was served on the petitioner/A3. Therefore, the complaint in C.C.No.423 of 2009 was also quashed on the ground that as per section 138 (b) of the Negotiable Instrument Act. After delivery of the legal notice only the complaint should be filed against the petitioner/A3.

13. On perusal of the complaint in C.C.No.423 of 2009, the respondent/complainant has mentioned the petitioner/3rd accused as a partner of the A-1 company and also residing at No.81, Sornapuri Enclave, 15, Velampalayam, Anuperpalayam, Tirupur. But, in the lawyer notice dated 24.10.2009, the company address alone has been sent. Therefore, the complaint filed against the petitioner/3rd accused under 138 of the Negotiable Instrument Act, not maintainable.

14. As per section 141 of the Negotiable Instruments Act, the provision says as follows:

"The petitioner submit that as per section 141 of the Negotiable Instruments Act, "If the person committing an offence under section 138 of the Negotiable Instrument Act, every person who, at the time the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence."

15. It is made clear that as per section 141 of Negotiable Instrument Act, if the person committing an offence under section 138 of Negotiable Instruments Act, every person who, at the time the offence was committed, was in charge of and was responsible to the company for the conduct of the business, as well as the company, shall be deemed to be guilty of the offence. But, admittedly in this case the petitioner/A3 has left from the partnership of the first accused on 14.07.2003 itself and to prove the same, the partnership dated 14.07.2003 has also been produced before this Court. Apart from this, as per section 138 of Negotiable Instrument Act, the persons who draws the cheque amount maintained by that person and the same was dishonoured.

16. In this case, it is the case of the respondent/complainant that on behalf of A1, A2 has issued the cheque with the consent and knowledge of A3 but it is not the case of the complaint is the signatory of the cheque. Therefore, it is made clear that the petitioner/A3 is not a signatory of the said cheque and second accused alone is the signatory of the cheque. Therefore, this petitioner is not at all involved in the offences as alleged by the respondent/complainant.

17. Therefore, I am of the view that the petitioner is not at all involved in the offences as alleged by the respondent/complainant. The petitioner was not the signatory of the cheque and she was also not the partner of the first accused company since she left the company on 14.07.2003 itself from the partnership of the A-1 company. Accordingly, this Criminal Original Petition is allowed and the case in C.C.No.423 of 2009, on the file of the Judicial Magistrate,

Avinashi, is quashed in respect of the petitioner/A3 alone.
Consequently, connected miscellaneous petitions is closed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

The Judicial Magistrate,
Avinashi.

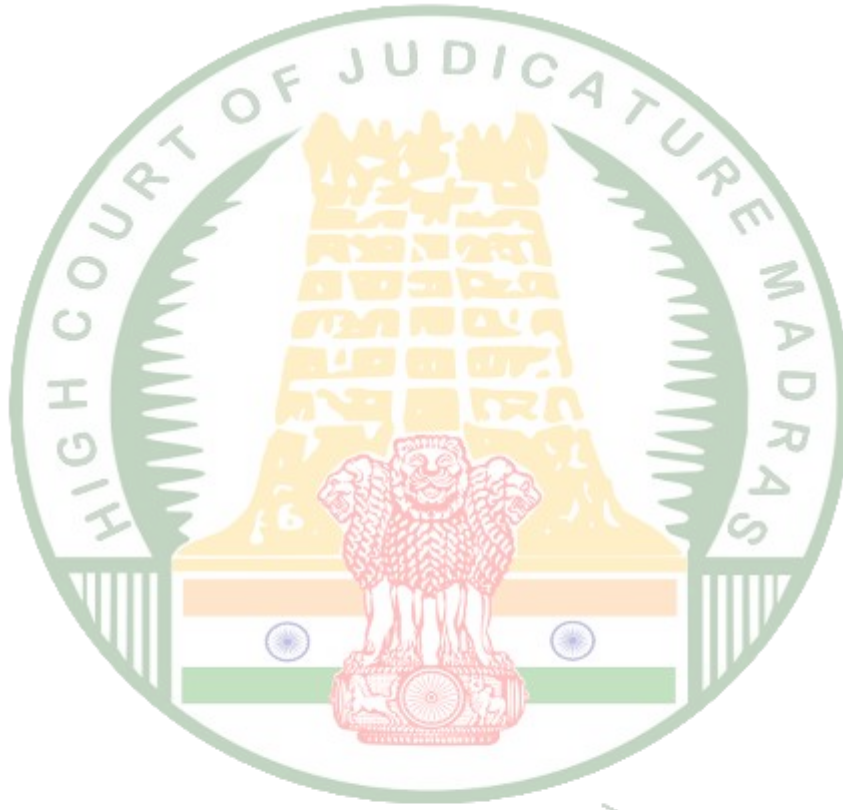
+1cc to M/s.N.Damodaran, Advocate, S.R.No.20896/2017

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