



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 15.03.2017

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

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CRL.O.P.(MD)No.20182 of 2016
and
Crl.M.P.(MD)Nos.10138 and 10139 of 2016

Maria Josephine Amala Aralia : Petitioner/1st Accused

Vs.

Thomas Selvan : Respondent/Complainant

Prayer:Criminal Original Petition is filed under Section 482 of Cr.P.C., praying to call for the records relating to C.C.No.251 of 2016, pending on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi, and to quash the said proceedings as against the petitioner herein.

For Petitioner : Mr.S.Deenadhayalan
For Respondent : Mr.P.Samuel Gunasingh

O R D E R

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

2. It is the case of Thomas Selvan that he owns several vehicles and he fills fuel for his vehicles in JJEF Agencies, a petrol bunk, that is run by Maria Josephine Amala Aralia [In short "Maria"]. At the request of Mariya (A-1), he gave loan of Rs.9,00,000/-, which was received on 28.01.2016 to J.M.Amalasukirtha [In short "Amala"], the second accused and in discharge of the liability, a cheque dated 25.07.2016 was issued for Rs.9,00,000/- in favour of Thomas Selvan. When Thomas Selvan presented it, the same was dishonoured and after issuing statutory notice, he launched the prosecution in C.C.No.251 of 2016, which is now pending on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi against Maria (A-1) and Amala (A-2), challenging which, Maria (A-1) is before this Court.

3. Heard Mr.S.Deenadhayalan, learned counsel for Maria (A-1) and Mr.P.Samuel Gunasingh, learned counsel for Thomas



4. Mr.S.Deenadhayalan, learned counsel for Maria (A-1) contended that the impugned cheque has been issued for and on behalf of JJEf Agencies and signed by Amala (A-2) as its authorized signatory and the impugned cheque was issued in the personal account that is being maintained by Amala (A-2). But, in the impugned cheque, she has affixed the seal of JJEf Agencies in order to make it as if the cheque has been issued by JJEf Agencies. He also contended that Maria (A-1) has not signed the cheque and the account on which the cheque has been issued is not that of Maria (A-1), but, it is that of Amala (A-2).

5. Per contra, Mr.P.Samuel Gunasingh, learned counsel for Thomas Selvan contended that both Maria (A-1) and Amala (A-2) were running JJEf Agencies as collection of individuals and, therefore, both of them are criminally liable.

6. This Court gave its anxious consideration to the rival submissions.

7. In a proceedings under Section 482 of the Code of Criminal Procedure, this Court cannot go into the disputed question of fact as to who was, in fact, running JJEf Agencies. This Court also cannot go into as to whether the impugned cheque that was signed by Amala (A-2) has been drawn on the individual account of Amala (A-2). However, on a reading of the complaint, it is seen that JJEf Agencies has not been arrayed as accused. Admittedly, the signature of Maria (A-1) is not there in the impugned cheque and on a perusal of the photocopy of the impugned cheque, it is clear that the said cheque has been signed by Amala (A-2). In order to make Maria (A-1) vicariously liable with the aid of Section 141 of the Negotiable Instruments Act, JJEf Agencies should have been made as accused. On this short ground alone, this petition deserves to be allowed and the prosecution as against Maria (A-1) be quashed.

8. In the result, this petition is allowed and the proceedings against Maria (A-1) in C.C.No.251 of 2016, pending on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi, is quashed. Liberty is given to Thomas Selvan to lodge a police complaint against both Maria and Amala for issuing a cheque drawn on the personal account of Amala as if it has been issued by JJEf Agencies. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar



To

1.The Judicial Magistrate,
Fast Track Court (Magisterial Level),
Thoothukudi.

2.-Do thro- The Chief Judicial Magistrate,
Thoothukudi.

+1cc to Mr.S.Deenadhayalan,Advocate,SR.15335/17

+1cc to Mr.P.Samuel Gunasingh,Advocate,SR.SR.15046/17

Order made in
CRL.O.P. (MD) No.20182 of 2016
15.03.2017

SML

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