BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2017

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P.(MD)No.16051 of 2011
and
M.P.(MD)Nos.1 and 2 of 2011

Jeenath Nisha ... Petitioner / Accused No.3

Vs.

1.G.Senthil Kumar ... 1st Respondent / Complainant

2.M/s.Ivee Steel Rolling Mill
3.M.Iqbal ... Respondents 2, 3 / Accused 1,2
(Notice is not necessary to respondent 2 and 3 as no relief is sought against them)

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the complaint in S.T.C.No.63 of 2011 on the file of Judicial Magistrate No.IV, Madurai.

For Petitioner : Mr.H.Lakshmi Shankar

For R-1 : M/s.M.Angayar kanni for M/s.V.S.Karthi Associates

For R-2 & R-3 : No appearance

O R D E R

This Criminal Original Petition has been filed to quash the private complaint in S.T.C.No.63 of 2011, pending on the file of the learned Judicial Magistrate No.IV, Madurai.

2. The petitioner is arrayed as third accused in the complaint filed by the first respondent under Section 138 of the Negotiable Instruments Act and the second respondent/Firm is the first accused and the third respondent, who is the partner of the firm, is the second accused.

3. Admittedly, the petitioner/A3 and the third respondent/A2 are the partners of the firm and they are having joint account in the name of firm, and the cheques were also issued by the accused on behalf of the firm. The complaint is filed implicating the firm and

other two partners, including this petitioner for an offence under Section 138 of Negotiable Instruments Act.

4. On a perusal of the averments in the complaint, it is seen that the petitioner/third accused along with another accused, borrowed a sum of Rs. 9,56,000/- from the first respondent/complainant. Out of Rs.9,50,000/- they repaid Rs.6,00,000/- by way of two cheques, each Rs.3,00,000/-, and they have executed promissory notes, for the remaining amount of Rs.3,56,000/-. Except this averment, no averments are available implicating this petitioner in the penal provision of Negotiable Instruments Act.

5. The learned counsel for the petitioner submitted that in the absence of specific averments, the petitioner cannot be prosecuted in the stringent provision of Negotiable Instruments Act. In support of his contention, the learned counsel for the petitioner relied upon the judgment of the Honourable Apex Court in [***Aparna A.Shah v.Sheth Developers (P) Ltd.,***] reported in (2013) 8 SCC 71.

6. Per contra, the learned counsel appearing for the first respondent submitted that this Court while exercising the inherent jurisdiction available under Section 482 of Cr.P.C, cannot look into the evidence adduced by the parties. From the allegations made in the complaint, it is seen that it is a matter for Trial to discuss the material object and other relevant factors. Accordingly, he prayed for dismissal of the Criminal Original Petition.

7. Admittedly, there is no dispute with regard to the facts of the case. The petitioner is the joint account holder and the said account is maintained in the name of second respondent/firm. The petitioner/A3 and the third respondent/A2 are the partners of the firm. However, the cheque is issued on behalf of the firm by the third respondent/A2 alone. Except the averments as stated above, no averments are available for implicating the petitioner in the stringent provision of Negotiable Instruments Act.

8. In this content, it is relevant to refer the decision of Honourable Apex Court, the case of ***Aparna A.Shah v.Sheth Developers (P) Ltd.,*** *reported in* ***(2013) 8 SCC page 71,*** wherein at paragraphs 27 and 28, it has been held as follows:

> “27.In the light of the above discussion, we hold that under Section 138 of the Act, it is only the drawer of the cheque who can be prosecuted. In the case on hand, admittedly, the appellant is not a drawer of the cheque and she has not signed the same. A copy of the cheque was brought to our notice, though it contains the name of the appellant and her husband, the fact remains that her husband alone had put his signature. In addition to the same, a bare reading of the complaint as also the affidavit of examination-in-chief of the

complainant and a bare look at the cheque would show that the appellant has not signed the cheque.

28. We also hold that under Section 138 of the NI Act, in case of issuance of cheque from joint accounts, a joint account-holder cannot be prosecuted unless the cheque has been signed by each and every person who is a joint account-holder. The said principle is an exception to Section 141 of the NI Act which would have no application in the case on hand. The proceedings filed under Section 138 cannot be used as arm-twisting tactics to recover the amount allegedly due from the appellant. It cannot be said that the complainant has no remedy against the appellant but certainly not under Section 138. The culpability attached to the dishonour of a cheque can, in no case "except in case of Section 141 of the NI Act" be extended to those on whose behalf the cheque is issued. 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 Act. Even the High Court has specifically recorded the stand of the appellant that she was not the signatory of the cheque but rejected the contention that the amount was not due and payable by her solely on the ground that the trial is in progress. It is noted that only after issuance of process, a person can approach the High Court seeking quashing of the same on various grounds available to him. Accordingly, the High court was clearly wrong in holding that the prayer of the appellant cannot even be considered. Further, the High Court itself has directed the Magistrate to carry out the process of admission/denial of documents. In such circumstances, it cannot be concluded that the trial is in advanced stage".

9. In the abovesaid decision cited supra, the Honourable Apex Court has held that under Section 138 of the N.I. Act, in case of issuance of cheque from joint accounts, a joint account-holder cannot be prosecuted, unless the cheque has been signed by each and every person, who is a joint account-holder. However, the drawer of the cheque can be made an accused in any proceeding under the 138 of Negotiable Instruments Act.

10. Admittedly, the present petitioner, being wife of the second accused and the partner of the first accused/firm, cannot be termed as drawer of the cheques. Admittedly, the cheques are issued by the third respondent/A2 on behalf of the firm in favour of the complainant.

11. In view of the above, this Court is of the view that the present petitioner cannot be implicated under the stringent provision of Negotiable Instruments Act. Accordingly, the petitioner is exonerated from the charges levelled against her. While exonerating the petitioner/A3 from the charges, I am not expressing any opinion in respect of the other accused. Therefore, the Trial Court may independently deal with the case in respect of the other accused, without being influenced by way of the

observation made by this Court.

12. In the result, this Criminal Original Petition is allowed and the proceedings in S.T.C.No.63 of 2011 pending on the file of the Judicial Magistrate Court No.IV, Madurai, is quashed in respect of the petitioner/A3 alone. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(C.O)

/True Copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate No.IV,
Madurai.

2.The chief Judicial Magistrate,
Madurai.

+1cc to M/s.V.S.KARTHI Associates in SR. No. 90143
+1cc to Mr.H.LAKSHMI SHANKAR Advocate in SR. No. 89730

IS
JS/SKN.RSK/SAR.3/03.01.2018/4P-5C

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