

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2018

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CrI.OP.No.22767 of 2018
and CrI.MP.No.12678 of 2018

S.M.Naina Mohamed .. Petitioner/ Respondent no.2

Vs.

Abdul Raheem

...Respondent/ Petitioner

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C to call for the entire records in S.T.C.No.174 of 2018 on the file of the Learned Judicial Magistrate Vaniyambadi, Vellore District and quash the same in respect of the petitioner herein.

For Petitioner : Mr.I.C.Vasudevan

For Respondent : Mr.K.Thiruvengadam

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in S.T.C.No.174 of 2018, pending on the file of the learned Judicial Magistrate, Vaniyambadi, Vellore District.

2. The petitioner has been added as 2nd accused in the complaint filed by the respondent under Section 138 of the Negotiable Instruments Act.

3. The learned counsel for the petitioner would submit that the cheque in question was admittedly signed by A1 and this petitioner is not the drawer of the cheque. This petitioner has been added as an accused only on the ground that he is the father of A1 and he knows about the amounts received by A1 from the respondent. The learned counsel for the petitioner would further submit that the allegations made in the complaint does not satisfy the requirements of Section 138 of the Negotiable Instruments Act and the petitioner/second accused has been unnecessarily added as an accused in this case.

4. The learned counsel for the petitioner has relied upon the Judgment of the Hon'ble Supreme Court reported in 2010 4 MLJ Criminal 701.

5. The learned counsel for the respondent would submit that this petitioner is the father of A1 and he is aware about the entire transaction and therefore, this petitioner added as an accused in the complaint filed by the respondent under Section 138 of the Negotiable Instruments Act.

6. Admittedly, in this case, the petitioner is not the signatory of the cheque and the allegations in the complaint does not satisfy the requirements of Section 138 of Negotiable Instruments Act. The Judgment of the Hon'ble Supreme Court referred supra squarely applies to the facts of the present case. The continuation of the proceedings against this petitioner will amount to a abuse of process of Court and therefore, the same requires interference by this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

7. In the result, the proceedings in S.T.C.No.174 of 2018, pending on the file of the learned Judicial Magistrate, Vaniyambadi, Vellore District, is hereby quashed, insofar as this petitioner is concerned. Accordingly, the criminal original petition is allowed and there shall be a direction to the Court below to complete the proceedings within a period of three months from the date of receipt of copy of this order, as against A1.

8. Accordingly, the criminal original petition is allowed with the above directions. Consequently connected miscellaneous petition is closed.

Sd/--

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

msrm/rka

To

The Judicial Magistrate,
Vaniyambadi,
Vellore District.

+1cc to Mr.K.Thiruvengadam , Advocate SR.No. 87522

+1cc to Mr. I.C.Vasudevan, Advocate SR.No. 86891

CrI.OP.No.22767 of 2018
and CrI.MP.No.12678 of 2018

ASK (03/01/2019)