



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH
CrI.O.P.[MD] No.10320 of 2017

and

CrI.M.P.(MD) Nos.7064 and 7065 of 2017

K.Meena

: Petitioner

vs.

G.Gunasekaran

: Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.162 of 2017 on the file of the District Munsif cum Judicial Magistrate, Aundipatty, Theni District and to quash the same.

For Petitioner : Mr.J.Senthil Kumar

For Respondent : Mr.B.Brijeshkishore

ORDER

This criminal original petition has been filed to quash the proceedings in C.C.No.162 of 2017 on the file of the learned District Munsif cum Judicial Magistrate, Aundipatty, Theni District.

2.The learned counsel for the petitioner would submit that the petitioner is only a joint account holder and she is not a drawer of the

cheque. She has been added as accused in the complaint filed under Section 138 of Negotiable Instruments Act by the respondent only on the ground that the loan was given to both this petitioner and her husband. Admittedly, in the complaint, the cheque has been signed only by A1, who is the husband of this petitioner. Therefore, according to the petitioner, Section 138 proceedings insofar as this petitioner is concerned is liable to be quashed in view of the judgment of the Hon'ble Supreme Court in the case of **Mrs.Aparna A.Shah vs. M/s. Sheth Developers Pvt.Ltd. and another** reported in **2013-2-L.W.(CrI) 454**.

3.The learned counsel for the petitioner would further submit that the loan was given to both the petitioner and the husband of the petitioner and therefore, the petitioner cannot wriggle out of the liability. Even though the petitioner was not signatory in the cheque, this petitioner is also liable to be prosecuted under Section 138 of Negotiable Instruments Act.

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4.The point raised for consideration in this petition is no



longer res integra.

5. It is clearly covered by the judgment of the Hon'ble Supreme Court referred supra. It will be relevant to extract the following portions of the judgment.

20. In *Smt. Bandeeep Kaur Vs. S. Avneet Singh*, (2008) 2 PLR 796, in a similar situation, learned Single Judge of the Punjab and Haryana High Court held that in case the drawer of a cheque fails to make the payment on receipt of a notice, then the provisions of Section 138 of the Act could be attracted against him only. Learned Single Judge further held that though the cheque was drawn to a joint bank account, which is to be operated by anyone, i.e., the petitioner or by her husband, but the controversial document is the cheque, the liability regarding dishonouring of which can be fastened on the drawer of it. After saying so, learned Single Judge accepted the plea of the petitioner and quashed the proceedings insofar as it relates to her and permitted the complainant to proceed further insofar as against others.

21. In the light of the principles as discussed in the earlier paras, we fully endorse the view expressed by the learned Judges of the Madras, Delhi and Punjab & Haryana High Courts.

22. 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 name of the appellant and her husband, the fact remains that her husband alone 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.

6. In view of the above, the proceedings in C.C.No.162 of 2017 on the file of the learned District Munsif cum Judicial Magistrate, Aundipatty, Theni District, is hereby quashed insofar as this petitioner is concerned. The Court below is directed to proceed further with the complaint insofar as A1 is concerned and complete the proceedings within a period of three months from the date of receipt of a copy of this order and report before this Court after completion of the proceedings.

7. Accordingly, this criminal original petition is allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CO)

/True Copy/



To

1. The District Munsif cum Judicial Magistrate,
Aundipatty,
Theni District

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Mm

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