BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 25.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD).No.6622 of 2014
and
M.P.(MD) No.1 of 2014

Riya David ..Petitioner/Accused

Vs.

T.Manikandan ..Respondent/Complainant

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the proceedings in C.C.No.35 of 2014 on the file of the Judicial Magistrate, Valliyoor and quash the same as illegal.

For Petitioner: Mr.K.Sivabalan

For Respondent: Mr.Subash Babu

O R D E R

This quash petition is filed to quash the criminal proceedings in C.C.No.35 of 2014 on the file of the Judicial Magistrate, Valliyoor, arising out of Section 138 of Negotiable Instrument Act, filed by the respondent/complainant.

2.The case of the complainant is that on 06.08.2013, the petitioner approached the respondent to avail a loan to the tune of Rs.3 lakhs and promised to repay the said loan, within a period of three months with interest at the rate of 1%. On 11.08.2013, the respondent lend loan to the petitioner to the tune of Rs.3 lakhs and towards repayment of the same, on 11.11.2013, the petitioner issued a cheque bearing No.635789 drawn on Axis Bank, Ashok Nagar, Chennai. On instructions, the respondent, on 11.11.2013, deposited the said cheque for collection and it was returned dishonoured for the reason that insufficient funds. Therefore, the respondent issued statutory notice on 10.12.2013 and after receipt of the same, the petitioner neither paid the cheque amount nor issue reply notice to the respondent. Hence, the complaint.

3.The learned counsel appearing for the petitioner would raise the following grounds to quash the criminal proceedings against the petitioner herein:

The cheque in question in the criminal proceedings issued by P.David Rajan that too from the current account stands in the same of said P.David Rajan. The petitioner never issued any cheque and never be the signatory to the alleged cheque issued by the petitioner. Further, the account from which, the cheque issued is also not belong to the petitioner herein. Therefore, the learned Judicial Magistrate ought not to have taken cognizance as against the petitioner herein. It is seen from the naked eye that the alleged cheque is signed by one P.David Rajan and as such, the learned Judicial Magistrate, mechanically has taken cognizance for the offence under Section 138 of the Negotiable Instrument Act as against the petitioner. The alleged cheque signed by one P.David Rajan in the capacity of Proprietor of CANNAN CITY, whereas, the loan allegedly borrowed by the petitioner and on her individual capacity. Therefore, at any point, the complainant is liable to be quashed and it is not maintainable as against the petitioner.
Thus, he prayed for quashment of the criminal proceedings against the petitioner herein.

4.Per contra, the learned counsel appearing for the respondent would submit that the petitioner borrowed a sum of Rs.3 lakhs and she only issued the cheque to the tune of Rs.3 lakhs towards repayment of the loan borrowed by her. The respondent did not know about the signatory of the cheque and the account belongs to whom. The petitioner issued her husband's cheque and also signed by him belongs to the current account of proprietorship concern CANNAN CITY. Deliberately, with dishonest intention to cheat the respondent, the cheque has been issued. Therefore, the offence under Section 138 of the Negotiable Instrument Act is very much attracted as against the petitioner and as such, he sought for dismissal of the quash petition.

5.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

6.Admittedly, the cheque has been issued from the current account of CANNAN CITY signed by one P.David Rajan as its Proprietor/authorised signatory. The petitioner/accused is not the signatory to the said cheque issued to the tune of Rs.3 lakhs dated 11.11.2013 drawn on Axis Bank, Ashok Nagar Branch, Chennai. In this regard, the learned counsel appearing for the petitioner relied upon the judgment reported in ***2013(8) SCC 71 - Aparna A. Shah V. Sheth Developers (P) Ltd.***, wherein, the Apex Court has held as follows:

"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.

23) We also hold 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. The said principle is an exception to Section 141 of the N.I. Act which would have no application in the case on hand. The proceedings filed under Section 138cannot be used as an 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 dishonour of a cheque can, in no case "except in case of Section 141 of the N.I. 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 to be 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."

7.In the light of the above principles laid down by the Hon'ble Supreme Court, the offence under Section 138 of Negotiable Instrument Act, it is only the drawer of the cheque who can be prosecuted. For convenience, the offence under Section 138 of the

Negotiable Instrument Act reads as follows:

> "**138. Dishonour of cheque for insufficiency, etc., of funds in the account.**—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:
>
> Provided that nothing contained in this section shall apply unless—
>
> (*a*) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
>
> (*b*) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
>
> (*c*) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.
>
> *Explanation.*—For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability."

8.In the case on hand, admittedly, the petitioner is not a drawer of the cheque and she has not signed the same. A copy of cheque is annexed with the typed set of papers and it is brought to the notice of this Court that one Mr.P.David Rajan signed as Proprietor by authorised signatory of CANNAN CITY from its current account. As per the case of the respondent/complainant, the petitioner borrowed a sum of Rs.3 lakhs to develop her business on

11.08.2013 on her personal capacity. On the date of the borrowal of the said amount itself, the petitioner issued the cheque in favour of the respondent/complainant. Therefore, the above cited judgment is squarely applies to this case and only the signatory of the cheque can be prosecuted under Section 138 of the Negotiable Instrument Act. The criminal proceedings filed under Section 138 of the Negotiable Instrument Act cannot be used as arm-twisting tactics to recover the amount allegedly due from the petitioner. It cannot be said that the complainant has no remedy against the petitioner, but, certainly not under the provisions of Section 138 of the Negotiable Instrument Act. Therefore the criminal proceedings under Section 138 of the Negotiable Instrument Act is not maintainable as against the petitioner herein. Since the petitioner herein is being the wife of the drawer of the cheque, she cannot be termed as drawer of the cheque. It is seen even from the naked eye that the cheque signed by one P.David Rajan, who is none other than the husband of the petitioner herein and the said cheque has been issued from the current account belongs to the proprietorship of CANNAN CITY. Therefore, in any event, the criminal proceedings initiated as against the petitioner cannot be sustained.

9.In view of the above, this Court is of the view that the petitioner cannot be implicated under the provision of Negotiable Instrument Act.

10.Accordingly, this criminal original petition is allowed and the criminal proceedings in C.C.No.35 of 2014 on the file of the Judicial Magistrate, Valliyoor is quashed as against the petitioner. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS-III)

To
1.The Judicial Magistrate, Valliyoor.

+ 1 CC TO MR.K.SIVABALAN, ADVOCATE IN SR NO.86448
ARUL
BU/SKN/SAR-I :29.10.2018 : 5P/3C

order made in
Crl.O.P.(MD).No.6622 of 2014
and
M.P.(MD) No.1 of 2014
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