



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2018

CORAM

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD)No.4058 of 2017

and

Crl.M.P(MD) Nos. 2929 and 2930 of 2017

Sumathi

... Petitioner

Vs.

B.Vairamuthu

...Respondent

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to STC No.98 of 2016 on the file of the learned Judicial Magistrate No.II (Fast Track Court No.II) Madurai and quash the same insofar as the petitioner herein/second accused concern.

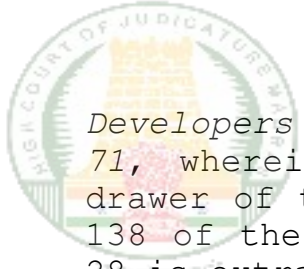
For Petitioner : Mr.S.Anwar Sammem

For Respondent : No appearance

ORDER

This petition has been filed seeking to quash the proceedings in STC No.98 of 2016 on the file of the learned Judicial Magistrate No.II (Fast Track Court No.II) Madurai

2.The petitioner herein is A2 in the criminal complaint filed by the respondent under Section 138 of the Negotiable Instrument Act. The learned counsel would submit that admittedly in this case, the drawer of the cheque was the husband of this petitioner and this petitioner has been arrayed as an accused in the 138 Negotiable Instrument Act complaint, only on the ground that she was also present at the time when the cheque was issued by her husband to the respondent. The learned counsel also read the relevant portion of the complaint wherein it is stated that the brother of the respondent also knew about the amount received by her husband from the respondent and that he was also present at the time when the cheque was signed and handed over by her husband who has been arrayed as A1 in the complaint. The learned counsel for the petitioner also brought to the attention of the Court the Judgment of the Honourable Supreme Court in *Aparna A.Shan -vs- Sheth*



Developers Private Limited and another reported in 2013(8)SCC page 71, wherein the Honourable Supreme Court has held that only the drawer of the cheque can be prosecuted for an offence under Section 138 of the Negotiable Instrument Act. The relevant para No.27 and 28 is extracted here under:

"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 of 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 has 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 not 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 as 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 ground 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".

3. This case is squarely covered by the judgment of the Honourable Supreme Court. The respondent cannot maintain this criminal complaint against this petitioner since admittedly she is not a drawer of the cheque.

4. In the result, the proceedings in STC No.98 of 2016 pending on the file of the learned Judicial Magistrate No.II, Fast Track Court, Madurai is quashed insofar as the petitioner herein is concerned. It is made clear that the court below can proceed further with the criminal complaint insofar as A1 is concerned and complete the proceedings within a period of three months from the date of receipt of copy of this order.

5. The Criminal Original Petition is disposed of with the above direction. Consequently connected miscellaneous petitions are closed.

Sd/
Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar(CS-III)

To:

The Judicial Magistrate No.II,
(Fast Track Court No.II)
Madurai

CrI.O.P.(MD)No.4058 of 2017

AAV
KK/RP/SAR-3/07.12.2018/3P-2C