



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P. (MD) .No.13807 of 2011

and

M.P(MD) .Nos.1 and 2 of 2011

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S.Ganesa Kurukkal

..Petitioner/Accused No.1

Vs.

M.Mangaiyarkarasi

..Respondent/Complainant

**PRAYER:** This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records relating to the C.C.No.208 of 2010 on the file of Judicial Magistrate No.III, Tiruchirapalli and quash the same insofar as the petitioner is concerned.

For Petitioners

:Mr.T.Ramesh

For Respondent

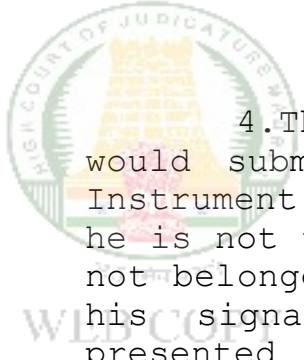
:Mr.N.Sankar Ganesh

### O R D E R

This quash petition is filed to quash the complaint filed for the offence under Sections 138 and 142 of Negotiable Instrument Act against the petitioner and another.

2.The case of the complainant is that both the accused are known to the complainant. On 05.08.2009, both the accused have borrowed jointly a sum of Rs.10,00,000/- on pronote executed by the first accused at the rate of interest 18% per annum. The first accused issued a cheque dated 10.08.2010 to discharge entire part of their liability for a sum of Rs.11,80,000/- bearing No.554837 dated 18.08.2010 in favour of the complainant. The said cheque was presented for collection and it was returned dishonoured with the banker's endorsement "ACCOUNT No.88 - OUR ACCOUNT OF G.SORNAVALLY". It was informed to the complainant. Therefore, on 20.08.2010, the second accused issued two cheques for a sum of Rs.5,90,000/- each. Both the cheques were presented for collection and the same were also returned for the reason that "INSUFFICIENT FUNDS". After causing statutory notice, the complainant filed private complaint for the offence under Section 138 of Negotiable Instrument Act before the Judicial Magistrate No.3, Tiruchirappalli.

3.After having taken cognizance for the offence under Sections 138 and 142 of Negotiable Instrument Act against the accused, the learned Judicial Magistrate No.3, Tiruchirappalli issued summons to the accused. On receipt of the summons, the first accused filed this quash petition.



4. The learned counsel for the petitioner/first accused would submit that the offence under Section 138 of Negotiable Instrument Act would not attract against him for the reason that he is not the drawer of the cheque. The cheque and the account is not belonged to him. The alleged cheque is not signed by him and his signature was forged by the respondent/complainant and presented the same. Therefore, the ingredients to attract the offence under Section 138 are not fulfilled by the respondent. Therefore, he prayed to quash the complaint insofar as the petitioner/first accused is concerned.

5. The learned counsel for the respondent would submit that the petitioner issued cheque after knowing very well that the account and the cheque book is belong to the second accused and signed the cheque. Therefore, it amounts to cheating and attract the offence under Section 138 of Negotiable Instrument Act and prayed for dismissal of the quash petition.

6. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials placed before this Court.

7. It is seen from the complaint that the cheque is not belonging to the petitioner and the cheque pertains to the account No.88 and it stands in the name of the second accused. The other cheques issued by the second accused belong to her account. Though the loan jointly borrowed by both the accused, the alleged cheque was not signed by the petitioner and as such, no offence under Section 138 of Negotiable Instrument Act can be said to have been committed by the petitioner. The offence under Section 138 of 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 arrangement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both:

<https://hcservices.ecourts.gov.in/hcservices/> provided that nothing contained in this section shall apply unless—



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(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 this regard, it is relevant to cite paragraph No.13 of the judgment reported in **(2009) 14 SCC 683 - Jugesh Sehgal V. Shamsher Singh Gogi**, which read as follows:

"In order to constitute an offence under Section 138 of the N.I. Act, this Court, in Jugesh Sehgal vs. Shamsher Singh Gogi, (2009) 14 SCC 683, noted the following ingredients which are required to be fulfilled:

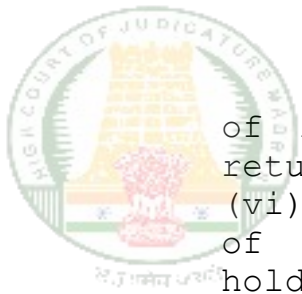
"(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account;

(ii) the cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;

(iii) that 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;

(iv) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the 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 the bank;

(v) the payee or the holder in due course of the cheque 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 15 days of the receipt



of information by him from the bank regarding the return of the cheque as unpaid;

(vi) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

Being cumulative, it is only when all the aforementioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under Section 138 of the Act." Considering the language used in Section 138 and taking note of background agreement pursuant to which a cheque is issued by more than one person, we are of the view that it is only the "drawer" of the cheque who can be made liable for the penal action under the provisions of the N.I. Act. It is settled law that strict interpretation is required to be given to penal statutes."

9. The learned counsel also cited the judgment reported in **(2013) 8 SCC 71 -Aparna A. Shah V. Sheth Developers (P) Ltd., and another**, wherein, the Apex Court has held as follows:

"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 138 cannot 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."

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10. In view of the above, the complaint against the petitioner is not maintainable and the respondent/complainant can very well proceed as against the second accused.

11. Accordingly, this quash petition is allowed and the complaint in C.C.No.208 of 2010 on the file of the Judicial Magistrate No.3, Tiruchirappalli is quashed insofar as the petitioner/first accused herein alone. Further, in view of the long pendency of the complaint, this Court directs the Judicial Magistrate No.3, Tiruchirappalli to dispose of the complaint in C.C.No.208 of 2008 as expeditiously as possible and in any event, within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The Judicial Magistrate No.3  
Tiruchirappalli.

+1cc to Mr.T.Ramesh, Advocate SR.No.77786

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VB/SKN/SAR3/21.08.2018/5P/3C

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