

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2019

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.24274 of 2014
and Crl.M.P Nos.1 & 2 of 2014

Amudha Natarajan

Petitioner

vs.

M/s. Rolls
Rep. by its Proprietor M Maran
No.7, F-2, Shanthi Street,
Dr Seethapathy Nagar,
Chennai - 600 042.

Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to quash the C.C.NO.3337 of 2014 pending before the Hon'ble Fast Track Court-III, Metropolitan Magistrate Court, Saidapet, Chennai so far as it relates to the Petitioner/3rd Accused.

For Petitioner : Mr.N.Vanaraj

For Respondent : Mr.N.Baaskaran

ORDER

This Petition has been filed challenging the proceedings initiated by the respondent under Section 138 of the Negotiable Instruments Act.

2. The petitioner has been added as A3 in the complaint.

3. The learned counsel for the petitioner submitted that admittedly A1 is a proprietorship concern and A2 is the sole proprietor. This petitioner has been added as an accused only on the ground that she is the wife of A2. The learned counsel further submitted that admittedly the petitioner is not even a signatory of the cheque and even as per the complaint it is only A2 who had signed the cheque on behalf of the proprietorship concern.

4. The learned counsel for the petitioner therefore submitted that the petitioner ought not to have been made as an accused and the court below went wrong in taking cognizance

of the complaint insofar as the petitioner is concerned. The learned counsel also relied upon the judgment of the Hon'ble Supreme Court in the case of Raghu Lakshminarayanan vs. Fine Tubes reported in 2007 5 (SCC) 103 and the judgment of this Court in the case of R.Priyadharshini vs. LIC Housing Finance Ltd reported in 2006 1 LW (Cr1.) 58.

5. The learned counsel for the respondent submitted that the petitioner was also actively participating in the business conducted by A1 and therefore she has been made as an accused in the complaint filed under Section 138 of the Negotiable Instruments Act. The learned counsel further submitted that the petitioner has to participate in the proceedings and liability of the petitioner can be decided only in the course of trial.

6. This Court has carefully considered the submissions made on either side and also the materials placed on record.

7. This case is squarely covered by the judgment cited by the learned counsel for the petitioner. Only a drawer of a cheque can be made liable for an offence under Section 138 of the Negotiable Instruments Act. Admittedly, A2 who is the husband of the petitioner had signed the cheque on behalf of the A1 proprietorship concern and the wife cannot be made as an accused. Since the concept of vicarious liability will not apply in a case of proprietorship concern, the proceedings against the petitioner is an abuse of process of Court and this Court has to necessarily interfere with the same.

8. In view of the above, the proceedings in C.C.No.3337 of 2014 on the file of the Fast Track Court-III, Metropolitan Magistrate Court, Saidapet, Chennai is hereby quashed insofar as the petitioner is concerned. The Court below is directed to proceed further with the complaint as against A1 and A2 in accordance with law and complete the proceedings within a period of three months from the date of receipt of copy of this order.

9. In the result this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

ssr

To

1. The Fast Track Court-III,
The Metropolitan Magistrate Court,
Saidapet, Chennai
2. The Public Prosecutor,
High Court of Madras,
Madras.

+1cc to Mr.N.Baaskaran, Advocate SR.No.48827

+1cc to Mr.N.Vanaraj, Advocate SR.No.48765

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and Crl.M.P Nos.1 & 2 of 2014

RR(CO)
GMY(22/07/2019)



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