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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.28383 of 2018

and

Crl.M.P.No.16506 of 2018

S.Srimathi

... Petitioner

-Vs-

C.Duraisamy

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure, to call for the records in C.C.No.1301 of 2018 on the file of the Fast Track Judicial Magistrate No.II, Coimbatore and quash the same.

For Petitioner : Mr.S.Gunalan

For respondent : Mr.S.B.Viswanathan

ORDER

This petition has been filed seeking to quash the proceedings in C.C.No.1301 of 2018, pending on the file of the Fast Track Judicial Magistrate No.II, Coimbatore.

2.The respondent has filed a complaint against the petitioner and her husband for an offence under Section 138 of Negotiable Instruments Act. A reading of the complaint itself shows that the cheque was signed by A1 and it was handed over to the respondent. The present petitioner has been added as A2 on the ground that she is the wife of A1 and that she was also a party at the time when the amount was received and when the compromise was arrived at between the parties.

3.The learned counsel for the petitioner submitted that it is now a well settled principle of law that in a 138 complaint, only a drawer of the cheque can be made as an accused, except where the offence falls under Section 141 of Negotiable Instruments Act. The learned counsel submitted that even on a mere reading of the complaint, no offence has been made out against the petitioner and the complaint is not sustainable in so far as the petitioner is concerned.



4.The learned counsel for the respondent submitted that both the accused persons were involved in the transaction and even at the time of compromise, the petitioner was actively involved and the cheques were handed over to the respondent, signed by A1, by both the accused persons. Therefore, the petitioner is also liable to be punished for an offence under Section 138 of Negotiable Instruments Act.

5.The facts of the present case, is squarely covered by the judgment of the Hon'ble Supreme Court in P.J.Agro Tech. Limited and Others vs. Water Base Limited reported in (2010) 4 MLJ (Cr1.) 701 (SC) and in Yeskey Enterprises, rep. by its Partner, K.Chandra, Chennai and others vs. State Bank of India, rep. by its Manager, Personal Banking Shyamal Bhattacharjee, Chennai reported in (2009) 4 MLJ (Cr1.) 1082.

6.In the considered view of this Court, the petitioner ought not to have been made as an accused and the Court below went wrong in taking cognizance of the complaint even as against the petitioner. Therefore, the proceedings in so far as the petitioner is concerned is an abuse of process of Court and the same requires interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

7.In the result, the proceedings in C.C.No.1301 of 2018, on the file of the Fast Track Judicial Magistrate No.II, Coimbatore, is quashed in so far as the petitioner is concerned and accordingly the Criminal Original Petition is allowed. The Court below is directed to continue further with the proceedings as against A1 and complete the proceedings within a period of three months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Fast Track Judicial Magistrate No.II,
Coimbatore.



2.do Thro Chief Judicial Magistrate,
Coimbatore.

+1cc to Mr.S.Gunalan, Advocate sr.58675
+1cc to Mr.S.B.Viswanathan, Advocate sr.58456

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nr 20/08/2019