



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE **V.BHARATHIDASAN**

Cr1.O.P. (MD) No.12666 of 2014

Suryathettravu Mary

: Petitioner/Accused No.1

Versus

1.G.Vanhaltran

:1st Respondent/Complainant

2.S.Thomas John

:2nd Respondent/Accused No.2

Prayer: Petition is filed under Section 482 of the Criminal Procedure Code praying to call for the records relating to C.C.No.295 of 2006, on the file of the learned Judicial Magistrate No.II, Tiruchirappalli and quash the same in respect of the petitioner.

For Petitioner

: Mr.N.Tamilmani

For R-1

: Mr.M.Karunanithi

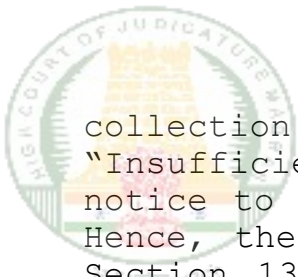
For R-2

: No Appearance

O R D E R

This petition has been filed to quash a complaint filed by the first respondent / complainant under Section 138 of the Negotiable Instruments Act in C.C.No.295 of 2006, on the file of the learned Judicial Magistrate No.II, Tiruchirappalli. The petitioner is arrayed as accused No.1 in this case.

2.The first respondent herein filed a complaint against the petitioner on the ground that, the property in Door No.11, Arokia Nagar, Madurai Main Road, Crawford, Tiruchirappalli-12, belongs to him and she has executed a power of attorney in favour of accused No.2, who is none other than the brother of the first accused for maintaining the above property. Thereafter, the accused No.2 has entered into a lease agreement with the complainant, and, the Accused No.2 has received a sum of Rs.2,10,000/- towards advance. But, he did not handover the possession of the house property to the complainant. In the above circumstances, the accused No.2 issued a cheque in the account maintained by him to the first respondent / complainant for repayment of the amount received by him. The cheque was presented before the Bank for



collection and the same was returned on the ground that "Insufficient Funds". Thereafter, the complainant issued a legal notice to the accused, the first accused did not repay the amount. Hence, the first respondent / complainant lodged a complaint under Section 138 of the Negotiable Instruments Act, before the learned Judicial Magistrate No.II, Trichirappalli, and the learned Judicial Magistrate has taken cognizance for the offence, and the matter is now pending in C.C.No.295 of 2006. To quash the above said complaint, the accused No.1 has filed the present complaint.

3.The learned counsel appearing for the petitioner would contend that, even though accused No.1 is the owner of the property, she has given a power of attorney in favour of accused No.2 to maintain the property. Only, the accused No.2 has entered into the lease agreement with the complainant and he alone received the amount. In order to repay the amount, the complainant has issued a cheque in the account, maintained by accused No.2, and the petitioner / accused no.1 has nothing to do with the transaction. He would further contend that she is noway connected with the case.

4.The learned counsel appearing for the first respondent would contend that, the petitioner being the owner of the property, the entire amount has been received only on behalf of the accused No.1 and she is liable to repay the amount.

5.I have considered the rival submissions made on either side and perused the records carefully.

6.On perusal of the complaint, it could be seen that, the property belongs to the accused No.1 and she has given a power of attorney in favour of Accused No.2. The Accused No.2 alone has entered into the lease agreement with the complainant and received a sum of Rs.2,10,000/- from the complainant. Since the accused No.2 could not handover the possession of the house property to the complainant, in order to repay the amount, has issued a cheque in the account maintained by him to the complainant. When the same was presented before the Bank, the cheque was returned on the ground that "Insufficient Funds". There is no material available on record to show that, she has also played a role in the transaction. Merely because, the petitioner is the owner of the property, she cannot be vicariously made liable in absence of any specific allegation for the offence under Section 138 of the Negotiable Instruments Act. The learned Judicial Magistrate without considering all these materials has taken cognizance and issued summons to the petitioner. In the above circumstances, the criminal proceedings initiated against the first accused is liable to be set aside.

7.Accordingly, the criminal proceedings initiated against the first accused in C.C.No.295 of 2006, on the file of the learned Judicial Magistrate No.II, Tiruchirappalli, is set aside against the petitioner / accused No.1. The trial Court is directed to proceed with the trial in respect of accused No.2 alone. Since



the matter is pending from the year 2006, the trial Court is directed to proceed with the trial and complete the same within a period of three months from the date of receipt of a copy of this order.

8.The Criminal Original petition stands allowed accordingly. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Judicial Magistrate No.II, Tiruchirappalli.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.N.TAMILMANI, Advocate SR-80512.

Order made in
Cr1.O.P. (MD) No.12666 of 2014
Dated: 07.08.2019

CS(22.08.2019) 3P 4C