



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Cr1.O.P.(MD).No.3598 of 2017

and

Cr1.M.P.(MD).Nos.2679 & 2680 of 2017

WEB COPY

D.Anitha ...Petitioner / Accused
Vs.

Jamina ...Respondent / Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records in C.C.No.08 of 2017, on the file of the Judicial Magistrate Court, Valliyur and quash the same as illegal.

For Petitioner : Mr.N.Kamesh
For Respondent : Mr.S.Palani Velayutham

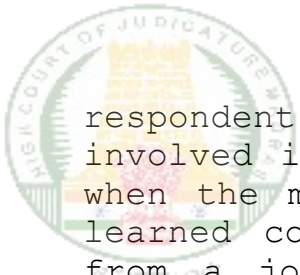
ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.08 of 2017, on the file of the Judicial Magistrate Court, Valliyur.

2. The respondent has initiated a criminal complaint against the petitioner for the offence under Section 138 of the Negotiable Instruments Act, 1881. A reading of the complaint shows that there was a financial transaction between the respondent and the husband of the petitioner and the husband of the petitioner is said to have borrowed a sum of Rs.3,00,000/- and a cheque was also drawn in favour of the respondent from the joint account that was held in the name of the petitioner and her husband.

3. The learned counsel appearing for the petitioner submitted that the complaint filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881, against the petitioner is not maintainable, in view of the fact that the petitioner has neither drawn the cheque nor issued the cheque in question in favour of the respondent. The learned counsel in order to substantiate his submission, relied upon the judgment of this Court in the case of **R.Priyadharshini Vs. LIC Housing Finance Limited** reported in **2006 (1) LW (Cr1.) 58** and the judgment of the Hon'ble Supreme Court in the case of **Aparna A.Shah Vs. Sheth Developers Private Limited** reported in **(2013) 8 SCC 71**.

4. Per contra, the learned counsel appearing for the
<https://hcservices.ecourts.gov.in/hcservices/>



respondent submitted that this petitioner was also very much involved in the transaction and she was also present at the time when the money was lent to the petitioner and her husband. The learned counsel submitted that admittedly, the cheque was drawn from a joint account in which the petitioner is also a joint account holder. Therefore, the complaint that has been filed against the petitioner is maintainable.

5. This Court has carefully considered the submissions made on either side and the materials available on record.

6. The issue that has been raised in this petition is no longer *res integra* and it is now well settled. In a case, where a husband issues a cheque from a joint account and the same is dishonoured, a wife cannot be made as an accused only on the ground that she was a joint account holder and the liability of the husband cannot be fastened on the wife. In view of this settled position of law, the criminal complaint that has been filed by the respondent is not maintainable and it requires the interference of this Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure. In the result, the proceedings in C.C.No.8 of 2017, on the file of the learned Judicial Magistrate, Valliyoor, is hereby quashed and accordingly, the same stands allowed.

7. It is always left open to the respondent to work out her remedy in accordance with law for recovery of the amount that is said to have been given as a loan to the petitioner and her husband. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To
The Judicial Magistrate, Valliyur

+1 CC to M/s.N. KAMESH, Advocate (SR-101433[F] dated 26/11/2019)

+1 CC to M/s.S. PALANI VELAYUTHAM, Advocate (SR-101629[F] dated 27/11/2019)

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26.11.2019