



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.09.2020

Delivered on : 14.09.2020

CORAM:

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

WEB COPY

CRL OP(MD)Nos.6743 and 6745 of 2018

and

Crl.M.P.(MD)Nos.3214, 3215, 3218 and 3219 of 2018

Vimala Josebraj, W/o.Josebraj : Petitioner in Crl.O.P.(MD)
No.6743/2018/A2

Josebraj, S/o.Arokiasamy : Petitioner in Crl.O.P.(MD)
No.6745/2018/A1

Vs.

Christina, W/o.Madhankumar ... Respondent in both the
Crl.O.Ps./Complainant

PRAYER: Petitions filed under Section 482 of the Code of Criminal Procedure, praying to call for the proceedings in S.T.C.No.65 of 2018, on the file of the learned Judicial Magistrate No.II [Fast Track Court], Madurai, and quash the same.

For Petitioner in
both the Crl.O.Ps. : Mr.S.Veeraraghavan

For Respondent in
both the Crl.O.Ps. : Mr.M.Solaisamy

COMMON ORDER

The petitioner in Crl.O.P.(MD)No.6745 of 2018 is arrayed as A1 in S.T.C.No.65 of 2018, on the file of the learned Judicial Magistrate No.II, Fast Track Court, Madurai. Similarly, the petitioner in Crl.O.P.(MD)No.6743 of 2018 is arrayed as A2 in the above-referred Summary Trial Case.

2.Since the issue involved in both the Criminal Original Petitions is one and the same, both the cases are heard together and disposed of by this common order.

3.The case of the respondent/complainant before the Trial Court is that, the petitioners/accused are running an export business in the name and style of Ocean, at Chennai. Both the petitioners/accused are known to the respondent/complainant through one Rajkumar, Trichy, who is the friend of one Poonkodi, who introduced the said Rajkumar to the respondent/complainant in the

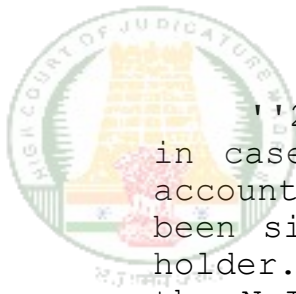
petitioners/accused had approached the respondent/complainant and demanded a sum of Rs.55,00,000/- as debt from her for their business development and also for their urgent needs. The respondent/complainant has also agreed for their proposal and arranged Rs.40,00,000/- from outsiders and also from her savings. Both the petitioners/accused had borrowed Rs.25,00,000/- and Rs.15,00,000/-, totally Rs.40,00,000/- from the respondent/complainant in the 2nd and 3rd week of February 2016 respectively, for their business development. Subsequent to availing of the said loan, the petitioners/accused had repaid Rs.25,00,000/- on various dates through the respondent's/complainant's bank account and their friend Joseph Selvaraj to the respondent/complainant upto March 2017. Thereafter, in spite of repeated demands made by the respondent/complainant, the petitioner in Crl.O.P.(MD)No.6743 of 2018 / A2 had issued a cheque of Axis Bank, Kodambakkam, Chennai Branch, bearing No.23089, dated 25.08.2017, for Rs.15,00,000/- from the joint account of the petitioners/accused, drawn in favour of the respondent/complainant, for settling the balance debt amount of Rs.15,00,000/-. When at the time the said cheque has been presented for collection, the same has been returned by mentioning the reason as 'funds insufficient' and thereafter, though notice has been sent to the petitioners/accused, directing them to pay the cheque amount within 15 days, both the petitioners/accused have not repaid the cheque amount and therefore, a case has been instituted against them by the respondent/complainant.

4.In respect of Crl.O.P.(MD)No.6745 of 2018, the first and foremost submission made by the learned counsel appearing for the petitioner is that, when at the time of alleged transaction, in the disputed cheque only Vimala Josebraj [Petitioner in Crl.O.P.(MD) No.6743 of 2018], who is the second accused, signed as a Drawer. Since the petitioner in Crl.O.P.(MD)No.6745 of 2018/A1 has not signed as a Drawer, he cannot be prosecuted for the offence under Section 138 of the Negotiable Instruments Act.

5.In support of his submission, the learned counsel appearing for the petitioner relied on the judgment of our Hon'ble Apex Court in the case of **Aparna A.Shah Vs. Sheth Developers Pvt. Ltd. and others** reported in **AIR 2013 SC 3210 : 2013 (8) SCC 71**.

6.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials on record.

7.In **Aparna A.Shah's case** [supra], our Hon'ble Apex Court has held that in case of issuance of cheque from joint account, only the drawer of the cheque can be prosecuted under Section 138 of the Negotiable Instruments Act. The relevant portion of the said judgment reads as follows:-



''23.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 N.I. Act.''

8.So, applying the above said principle laid down by our Hon'ble Apex Court to the case on hand and also considering the fact that in the disputed cheque only the petitioner in Crl.O.P.(MD) No.6743 of 2018 - Vimala Josebraj / A2 alone has signed as a drawer, the case filed against the petitioner viz., Josebraj, who is arrayed as A1 in S.T.C.No.65 of 2018, is liable to be quashed. Accordingly, the same is quashed.

9.In respect of Crl.O.P.(MD)No.6743 of 2018 filed by Vimala Josebraj/A2, though the learned counsel appearing for the petitioner has raised several grounds, those grounds are common one, which had taken by all the accused in the cases filed under Section 138 of the Negotiable Instruments Act to quash the proceedings, however, he has stated that the present case has been filed without any cause of action, further, the disputed cheque has been issued only as a security for the loan arranged by the respondent/complainant in favour of the petitioners/accused.

10.At this juncture, it is relevant and useful to see the judgment of our Hon'ble Apex Court in **Ajay Kumar Das Vs. State of Jharkhand and others** reported in **AIR 2011 SC 3652 : 2011 (12) SCC 319**, wherein our Hon'ble Apex Court has held that genuineness of the allegations/charge is an issue to be tried and the Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure cannot delve into such factual controversy so as to quash the proceedings.

11.So, applying the principles set out by our Hon'ble Apex Court in the above referred case to the case on hand, this Court is of the view that whether the cheque has been issued as security for the loan obtained by the petitioners/accused or not, has to be decided only at the time of trial.



12. In respect of cause of action, it is relevant and necessary to see Section 138 of the Negotiable Instruments Act, which 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 be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

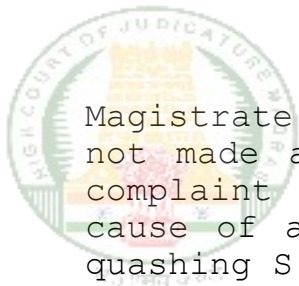
(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(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.'

13. Here, in this case, the cheque has been issued by the petitioners/accused on 25.05.2017. Subsequently, the same has been presented before the Bank for collection on 09.06.2017, i.e., within six months. Thereafter, the details of dishonour was intimated to the respondent/complainant on 13.06.2017 through the Bank. Immediately, within 15 days, i.e., on 27.06.2017, the respondent's counsel issued a demand notice directing the petitioners to pay the cheque amount within 15 days. Though said notice has been received by the petitioners on 30.06.2017, they have not made any payment to the respondent/complainant. Therefore, a cause of action for filing the complaint arose. In respect of the date mentioned by the respondent in the complaint filed before the learned Judicial



Magistrate No.II, Fast Track Court, Madurai, the petitioners have not made any objection and therefore, it cannot be said that the complaint has been filed by the respondent/complainant without any cause of action. Hence, the grounds raised by the petitioner for quashing S.T.C.No.65 of 2018, is devoid of merits.

WEB COPY

14.In fine,

(i) Crl.O.P.(MD)No.6743 of 2018 is dismissed.

(ii) Crl.O.P.(MD)No.6745 of 2018 is allowed.

Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

smn2

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Judicial Magistrate No.II,
Fast Track Court,
Madurai.

CRL OP (MD)Nos.6743 and 6745 of 2018
14.09.2020

SCR(CO)

CS(22.09.2020) 5P 2C