



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2020

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Cr1.O.P. (MD) No.14154 of 2016

and

Cr1.M.P. (MD) Nos.6605 & 6606 of 2016

K.Maheswari ... Petitioner/Accused

Vs.

P.Jayaseelan ... Respondents/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to case in C.C.No.319 of 2016 pending on the file of the Judicial Magistrate Fast Track Court at Magistrate Level, Karur and quash the same.

For Petitioner : Mr.N.Dilip Kumar

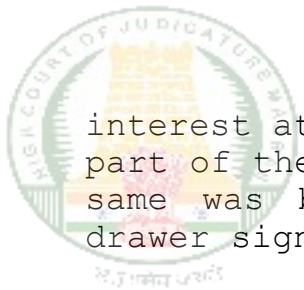
For Respondent : No Appearance

ORDER

Heard the learned counsel for the petitioner.

2.The case of the petitioner is that private complaint filed against her under Sections 138, 141, 142 of the Negotiable Instruments Act, is not maintainable since the partnership firm not made party accused in the complaint, though the complaint is filed under Section 141 of Negotiable Instruments Act.

3.The perusal of the private complaint indicates that the petitioner herein carrying business in the name of ACE Engineers. The petitioner has requested loan of Rs.21 Lakhs from the complainant/respondent herein during the first week of September, 2014. Accordingly, on 22.09.2014, and 23.09.2014, the complainant has advanced a sum of Rs.9 Lakhs each and on 23.09.2014 a sum of Rs.3 Lakhs was given to the petitioner. Thus total sum of Rs.21 Lakhs was received by the petitioner herein from the complainant/respondent and also promissory note to the effect was executed by the petitioner agreeing to re-pay the money with



interest at the rate of Rs.1.50 per hundred per month. To discharge part of the debt, cheque was issued by the petitioner. However, the same was bounced with a memo dated 08.05.0215 stating that the drawer signature differs.

4. After issuing statutory notice, present complaint has been filed for the offence under Sections 138, 141, 142 of the Negotiable Instruments Act. According to the petitioner, the said private complaint is not maintainable and the learned Judicial Magistrate, Karur ought not to have taken cognizance of the complaint since admittedly money was lent in the name of partnership firm and the said partnership firm not been implicated as an accused and no statutory notice under Section 138 was issued to the partnership firm and therefore, entire prosecution is vitiated.

5. Section 141 of the Negotiable Instrument Act reads as below:

141. Offences by companies.—(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

1[Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section, —

(a) "company" means anybody corporate and includes a firm or other association of individuals; and



(b) "director", in relation to a firm, means a partner in the firm.

6.As far as this case is concerned, the petitioner herein is the signatory of the cheque. Statutory notice is issued to him calling upon him to pay the cheque amount or to face the prosecution. It is the case of the petitioner that the partnership firm has not implicated as an accused. If this argument is put forth on behalf of the Company, this Court would have thought of entertaining this petition, since the Company has independent juristic body. But partnership firm has no independent legal identity and it has to be represented by it's partners.

7.When it comes to 138 of Negotiable Instrument Act, as pointed out earlier, the signatory of the cheque is the person, who have *mens rea* and liable to be prosecuted personally in the case of dishonour. In this case, complainant has rightly instituted a case against the signatory of the cheque and I find no ground for quashing the complaint. Hence, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gns

To

Judicial Magistrate Fast Track Court Magistrate Level,
Karur.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-10789[F] dated 10/03/2020)

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SS/14.05.2020/3P-3C