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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.11.2021

CORAM

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

Crl.O.P.No.24226 of 2015

and

M.P.Nos.1 & 2 of 2015

Mrs. Brindha

... Petitioner

Vs

1. V. Jeyakrishnan (died)

2. J. Maheswari

W/o. late V.Jeyakrishnan

... Respondents

(The 2nd respondent is impleaded as L.R of the first respondent as per the order of this Court in Crl.M.P.No.8729 of 2021 dated 16.11.2021)

Criminal Original Petition filed under Section 482 of Criminal Procedure Code to call for the entire records pertaining to all further proceedings in STC No.5975 of 2014 pending on the file of the Judicial magistrate, Sathyamangalam and quash the same as illegal, in competent and without jurisdiction.

For petitioner ... Mr. D.Velmurugan

For respondent ... Mr. M. Poovalingam

ORDER

The petitioner, who is A2 in STC No.5975 of 2014 on the file of the Judicial Magistrate, Sathyamangalam, Chennai, is before this Court with this quash petition.

2. The case of the complainant is that A1, who is the husband of the petitioner, borrowed a sum of Rs.50,000/- in the month of November 2013 from the complainant. In order to discharge the above loan, A1 has issued a cheque in a joint account maintained by both A1 and A2. When the same was



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presented for collection, it was dishonored on the ground of "Account Closed". After complying with the legal requirements, the complainant filed the complaint under Section 138 of Negotiable Instruments Act and the learned Judicial Magistrate taken cognizance for offences under sections 138 and 142 of Negotiable Instruments Act and issued process. Now, the present petition has been filed by A2 to quash the private complaint.

3. The learned counsel for the petitioner would submit that even though it is a joint account in the name of A1 and A2, admittedly, the cheque was issued by A1/Husband only. In those circumstances, the petitioner/A2 cannot be made as an accused. Only with an intention to harass, the present complaint has been filed. In respect of his contention, the learned counsel also relying upon a judgment reported in AIR 2013 SC 3447 (Mrs.Aparna A.Shah -vs- M/s.Sheth Developers Pvt. Ltd & Another).

4. The learned counsel for the respondent would submit that both the husband and wife jointly borrowed the amount and issued a cheque in the joint account owned by them. After issuance of the cheque, they deliberately closed the account in order to avoid the repayment. In the above circumstances, the trial Court rightly taken cognizance against both the accused and they are jointly liable to pay the amount and hence, the petitioner cannot escape from her liability.

5. This Court considered the rival submissions made on either side and perused the materials available on records carefully.

6. Admittedly, the cheque has been issued in the joint account maintained by both A1 and A2. But, the cheque has been signed only by A1/ husband and the petitioner/A2 is not a signatory to the cheque. In the said circumstances, the petitioner cannot made liable for the prosecution, and A1, who was the drawer of the cheque alone is liable to be prosecuted under Section 138 of Negotiable Instruments Act. As the petitioner is not a drawer of the cheque, no prosecution can be initiated against her. In similar circumstances, the Hon'ble Supreme Court, in the case of Mrs.Aparna A.Shah -vs- M/s.Sheth Developers Pvt. Ltd & Another reported in AIR 2013 SC 3447, has held 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



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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 Act. Even the High Court has specifically recorded the stand of the appellant that she was not the signatory of the cheque but rejected the contention that the amount was not due and payable by her solely on the ground that the trial is in progress. It is to be noted that only after issuance of process, a person can approach the High Court seeking quashing of the same on various ground available to him.

7. Considering the above facts, this Criminal Original Petition is allowed and the case against the petitioner/A2 in STC No.5975 of 2014 on the file of the Judicial Magistrate, Sathyamangalam, is quashed. Since the case is pending from the year 2014, the trial Court is directed to proceed with the trial against A1 and dispose the same within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

Mrp



To

1. The Judicial Magistrate,
Sathyamangalam.

2. The Inspector of Police,
K10 Koyambedu Police Station,
Chennai District.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.D.Velmurugan, Advocate SR.No.58773

CrI.O.P.No.24226 of 2015

GPL(CO)
GN(17/12/2021)