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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2021

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THE HON'BLE Ms. JUSTICE R.N.MANJULA

Crl.O.P.No.1879 of 2019
and
Crl.M.P.No.1163 of 2019

P.Manimegalai

...Petitioner / Accused

Vs.

N.Senthilkumar

...Respondent / Complainant

PRAYER : This Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, praying to call for the records in STC.No.60 of 2019 pending on the file of the learned Judicial Magistrate (Fast Tract Court), Tiruppur and to quash the same.

(Prayer amended as per order of Court dated 13.02.2019 in Crl.M.P.No.2395 of 2019)

For Petitioner : Mr.M.Guruprasad

For Respondent : Mr.R.Baskar

O R D E R

This Criminal Original Petition has been filed under Section 482 of the Cr.P.C, to call for the records in STC No.60 of 2019 pending on the file of the learned Judicial Magistrate (Fast Track), Tiruppur and quash the same.

2. The impugned proceedings is the private complaint given by the respondent against the petitioner for dishonour of the cheque under Section 138 of N.I.Act.

3. The learned counsel for the petitioner submitted that the cheque itself was not issued by a person who is the account holder and hence no proceedings under Section 138 of N.I.Act, can be initiated against her. He further submitted that he has revealed the said fact in his reply notice itself, but the respondent omitted to take note of the same and proceeded to file the case.



4. The learned counsel for the respondent submitted that the cheque presented in the Bank was returned with an endorsement "ACCOUNT BLOCKED". He further submitted that the petitioner failed to produce any material of unimpeachable quality in order to accept his contention that the petitioner is not the account holder and hence it cannot be quashed. The records would show that except the self-asserted contention of the petitioner that she has not executed the cheque and she is not the account holder, no other material is produced to substantiate her contention.

5. The learned counsel for the petitioner relied on the judgement reported in 2009 (14) SCC 683 in the case of Jugesh Sehgal Vs. Shamsheer Singh Gogi, in support of his contention that the very fact that the petitioner is not the account holder, would merit the invoking of the inherent powers of this Court to quash the proceedings. The relevant paragraphs of the judgement are extracted as follows:

"16. The next question for consideration is whether or not in the light of the afore-mentioned factual position, as projected in the complaint itself, it was a fit case where the High Court should have exercised its jurisdiction under Section 482 of the Code?

17. The scope and ambit of powers of the High Court under Section 482 of the Code has been enunciated and reiterated by this Court in a series of decisions and several circumstances under which the High Court can exercise jurisdiction in quashing proceedings have been enumerated. Therefore, it is unnecessary to burden the judgment by making reference to all the decisions on the point. It would suffice to state that though the powers possessed by the High Courts under the said provision are very wide but these should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist."

6. It is true that the inherent powers of this Court can rightly be exercised, if materials are produced to show that the petitioner is not the account holder and the account pertains to some one else.

7. The learned counsel for the respondent distinguished the facts of this case, from the facts of the case involved in the above said judgement and invited the attention of this Court to paragraph Nos.14, 15 and 22.

"14. In the case before us, it is clear from the facts, briefly noted above, and in para 3 of the



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complaint as extracted, that on receipt of the return memo from the bank, the complainant is stated to have realized that the dishonoured cheque was issued from an account which was not maintained by accused No.1-- the appellant herein, but by one Shilpa Chaudhary.

15. As a matter of fact and perhaps having gained the said knowledge, on 20th January, 2001, the complainant filed an FIR against all the accused for offences under Sections 420, 467, 468, 471, 406 of the Indian Penal Code (IPC). Thus, there is hardly any dispute that the cheque, subject matter of the complaint under Section 138 of the Act, had not been drawn by the appellant on an account maintained by him in the Indian Bank, Sonapat branch. That being so, there is little doubt that the very first ingredient of Section 138 of the Act, enumerated above, is not satisfied and consequently the case against the appellant for having committed an offence under Section 138 of the Act cannot be proved.

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22. As already noted hereinbefore, in para 3 of the complaint, there is a clear averment that the cheque in question was issued from an account which was non-existent on the day it was issued or that the account from where the cheque was issued "pertained to someone else". As per complainant's own pleadings, the bank account from where the cheque had been issued, was not held in the name of the appellant and therefore, one of the requisite ingredients of Section 138 of the Act was not satisfied. Under the circumstances, continuance of further proceedings in the complaint under Section 138 of the Act against the appellant, would be an abuse of the process of the Court. In our judgment, therefore, the decision of the High Court cannot be sustained."

8. In the case dealt in the above judgement, the respondent has got the opportunity to know from the very bank that the account did not belong to the petitioner and it belonged to someone else. But in this case, no authenticated document is produced to show that the account does not belong to the petitioner. In such case, the petitioner has got no other option except to raise the said fact before the trial Court, as her defence. However, in order to save the time of the Court, it is better for the learned Magistrate, to examine the Bank Officer first in and to ascertain whether the petitioner is the account holder of the cheque involved in this case. Since no sufficient material available before this Court to conclude that the petitioner is not the account holder, the jurisdiction under Section 482 could not be exercised.



9. In view of the above said reasons, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed. However, the learned Judicial Magistrate, is directed to examine the Bank Officers first in order to ascertain whether the account stands in the name of the petitioner and to proceed further in accordance with law.

Sd/-
Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

Pns

To

The Judicial Magistrate
(Fast Tract Court),
Tiruppur.

+1cc to Mr.M.Guruprasad, Advocate SR.No.55144

Cr1.O.P.No.1879 of 2019
and Cr1.M.P.No.1163 of 2019

RGN(CO)
RVM(30/11/2021)