IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.5685 of 2018

R.Rajeswari ... Petitioner

Vs.

Chettinad Morimura Semiconductor Material Pvt. Ltd.,
rep,by its Authorized Person,
Mr.Ananthakrishanan ... Respondent

Prayer: Petition filed under Section 482 of Cr.P.C., to call for the records in C.C.No.283 of 2017, on the file of the Fast Track Court-Judicial Magistrate, Alandur, Chennai and quash the complaint.

For Petitioner : Mr.G.Arul Murugan

For Respondent : Mr.V.Vijayakumar

O R D E R

The petitioner has filed this petition seeking to call for the records in C.C.No.283 of 2017, on the file of the Fast Track Court-Judicial Magistrate, Alandur, Chennai and quash the same.

2. The case of the prosecution is that the complainant is one of the a leading companies involved in the production manufacture, purchase, refine, process, import and export, sell, dispose of and deal in quartz powder, raw or purified and other minerals substances containing quartz and its value added products. The complainant had entered into an agreement with one Dynamic Mines Corporation, a Partnership firm and its two sister concerns namely DMC Enterprises and R.P.Enterprises, run by the same partners, for purchasing 12000 MT uninterrupted supply of high grade "A-Grade Quartz" minerals for three years. As per the terms of the agreement, the Complainant had paid Rs.1,15,00,000/- to the said Corporation vide Cheque No.006559 drawn on Karur Vysya Bank, Solinganallur Branch and the same was duly credited in the Bank Account of the said Corporation. The said Corporation and its Sister Concerns are jointly run by its partners, namely, Mr.P.Ramachandran, Mr.M.S.Palanivel and Mr.R.G.Nataraj and the transaction with them based on the agreement is taken care of by the Senior General Manager of the complainant Company. Thereafter, the said Corporation had slowly reduced the supply and subsequently the complainant had also adjusted the minerals supplied by the said Corporation

towards amount paid and demanded back the balance amount of Rs.31,62,096/- for which, the complainant had received a cheque bearing No.912468 drawn on Indian Overseas Bank, Gandhinagar, Adyar Branch dated 20.09.2017, for the sum of Rs.31,62,096/- in favour of complainant, duly signed by Mr.P.Ramachandran, one of the partners, through a registered post with covering letter dated 13.09.2017 with seal and signature of Mr.P.Ramachandran. When the cheque had presented for collection through its Banker namely Karur Vysya Bank, Solinganallur Branch, Chennai on 27.09.2017, the same was dishonoured by the accused Banker for the reason "Payment Stopped by Drawer" vide return memo dated 28.09.2017. Thereafter, the complainant had sent a statutory demand notice under Section 138(b) of the Negotiable Instruments Act to the said Corporation and all of its managing partners / partners and the said notice was served on Mr.P.Ramachandran on 17.10.2017 and the notice addressed to the said Corporation was returned. However Mr.S.Palanivel, Managing Partner and Mr.P.G.Nataraj, Partner had jointly replied that the said cheque does not belong to Dynamic Mines Corporation and the same was issued by Mr.P.Ramachandran in his personal capacity, vide reply letter via, e-mail on

26.10.2017. Thereafter, the complainant, suspecting foul play on the part of the said Corporation, enquired about the details of the cheque and found that the cheque belongs to the bank account maintained in the name of the petitioner herein, who is the wife of one of the partner, viz., P.Ramachandran and immediately the complainant had issued the rejoinder notice dated 10.11.2017 to the said Corporation and all its partners as well as to the account holder of the cheque Mrs.P.Rajeswari, wife of Mr.P.Ramachandran and they have jointly sent a reply lawyer notice dated 15.11.2017 threatening him with legal action. Therefore, he lodged a complaint under Section 200 Cr.P.C for commission of an offence under Section 138 of the Negotiable Instruments Act, on the file of the Fast Track Court-Judicial Magistrate, which has been taken cognizance of by ythe said Court and challenging the same, the present petition is filed by the petitioner.

3. Mr.G.Arul Murugan, learned counsel appearing for the petitioner submitted that even a bare perusal of the complaint makes it clear that there was business transaction only between the partners of the said Corporation,

which includes petitioner's husband. The complainant and the petitioner have not entered into any business transaction. Admittedly, though the bank account stands in the name of the petitioner, the instrument was not the drawer of the cheque and that the cheque has been used without her knowledge. It is further submitted that inspite of the fact that the business transaction was between the partners of the said Corporation and the defacto complainant, neither the Company nor the signatories have been included as accused in the complaint and not arrayed as parties in this petition and therefore, making the petitioner alone as an accused in the present round of litigation, without impleading the partners and the husband of the petitioner, who had issued cheque in his personal capacity, as parties, is unsustainable and prays for quashment of the Criminal Case.

4. Further the learned counsel appearing for the petitioner submitted that even a perusal of Section 138 of the Negotiable Instrument Act makes it very clear that *"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 <u>for the discharge, in whole or in</u>*

part, of any debt or other liability, is returned by the bank unpaid". In the present case on hand, there is no business transaction between the petitioner and the defacto complainant and it is only between the petitioner's husband, who is one of the partner in the said Corporation and therefore, including the petitioner alone in the said complaint is not sustainable. Since the complaint does not satisfy the requirements contemplated u/s 138 of the Negotiable Instruments Act, the complaint itself is bad in law and liable to be quashed.

5. *Per contra,* learned counsel appearing for the defacto complainant submitted that inspite of the fact that the business transaction is not between the defacto complainant and the petitioner, still the account stands in the name of the petitioner and the cheque having been issued by the petitioner, the liability is on the petitioner to prove at the time of trial that she has not issued the said cheque. He further submitted that the signature presented in the cheque is of the husband of the petitioner, which shows that both the petitioner and her husband have colluded together to cheat the defacto complainant and hence complaint for an offence under Section 138 of the

Negotiable Instrument Act, is very well maintainable.

6. This Court gave its anxious consideration to the submissions advanced by the learned counsel on either side and also perused the materials available on record.

7. The factum of the dealing of the complainant with the Corporation and its partners is not disputed. Equally it is not in dispute that there is no dealing between the petitioner and the defacto complainant. However, the cheque has been issued for the debt of the Corporation by one of the partners of the Corporation from the account of the petitioner to which the petitioner claims no knowledge. The cheque having been returned with an endorsement "Payment stopped by drawer", the defacto complainant has filed the complaint which has been taken cognizance of.

8. The pivotal contention of the learned counsel for the petitioner is that the ingredients as contemplated in Section 138 of the Negotiable Instruments Act having not been fulfilled, the cognizance taken by the

Magistrate is not sustainable. For better appreciation Section 138 of the Negotiable Instruments Act is quoted below :-

> *"138. ......*
>
> *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'*
>
> *(Emphasis Supplied)*

9. A bare perusal of the above section, it is evident that to take action against non-payment of any cheque amount due to its return by the bank as unpaid, there should exist any debt or liability on the part of the drawer of the cheque and the recipient of the cheque. In the present case, it is the admitted stand of the parties that there was no debt or liability on the part of the petitioner to the complainant. Therefore, mere issuance of cheque belonging to the petitioner would not suffice to attract Section 138 of the Negotiable Instruments Act in the absence of the other ingredients of the said section being fulfilled.

10. Further, it is to be pointed out that it is the admitted case of the defacto complainant that the bank account belongs to the petitioner. However, the cheque has been drawn by the husband of the petitioner. It is not the case of the defacto complainant that the account is a joint account. In that backdrop, a perusal of the cheque reveals that the cheque has been signed by P.Ramachandran and P.Rajeswari does not seem to be the signatory to the cheque. In such a scenario, taking action on the petitioner, who is merely the account holder, but who has not issued the cheque, would be wholly impermissible. If at all, the complainant is aggrieved, he has to proceed against P.Ramachandran for issuance of the cheque and not against the petitioner. Further, it is to be pointed out that the due is from the Corporation to the complainant and all the partners are vicariously liable to pay the amount to the complainant. However, they have not been made parties to the complaint, but the petitioner, who is no way concerned with the affairs of the Corporation and who has no dealings with the complainant has been proceeded with, which cannot be permitted.

11. For the reasons aforesaid, this Court is of the considered view that the present complaint against the petitioner is legally untenable and the cognizance of the said complaint taken by the Magistrate leading to the registration of the case deserves to be interfered with.

12. Accordingly, this Criminal Original Petition is **allowed** and C.C.No.283 of 2017, on the file of the Fast Track Court Judicial Magistrate, Alandur, Chennai, is quashed. Consequently connected miscellaneous petitions are closed.

29.06.2021

sk/GLN

Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To

1.The Inspector of Police,
District Crime Branch,
Land Grabbing Special Wing,
Vellore, Vellore District.

2.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

M.DHANDAPANI,J.
Sk/GLN

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