

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.03.2021

Coram

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.10148 of 2019
and Crl.M.P.Nos.5252/2019 & 3625/2020

Kasthuri

...Petitioner/2nd Accused

Versus

J.Gomathi

...Respondent/Complainant

This Criminal Original Petition is filed under Section 482 of Criminal Procedure Code praying to call for the records and quash the complaint in CC.No.688 of 2018 before the FTC-III Metropolitan Magistrate, Saidapet, Chennai as against the petitioner.

For Petitioner : Mr.V.T.Narendiran

For Respondent : Mr.T.R.Kumaravel

O R D E R

This petition has been filed challenging the proceedings in CC.No.688 of 2018 before the FTC-III Metropolitan Magistrate, Saidapet, Chennai.

2. The respondent has filed a complaint against the petitioner and her husband for the offence under Section 138 of Negotiable Instruments Act. According to the respondent, both the petitioner and her husband were doing chit business and had received money from the respondent and a cheque for a sum of Rs.3,50,000/- was issued by them. The cheque was signed by the first accused who is the husband of the petitioner. The complaint came to be filed both against the first accused and the petitioner on the ground that the petitioner was also involved in the chit business and the respondent, on many occasions handed over money to the petitioner.

3. The learned counsel for the petitioner submitted that only the drawer of the cheque can be made as an accused in the complaint filed under Section 138 of Negotiable Instruments Act and admittedly, the petitioner is not the drawer of the cheque. Therefore, the learned counsel submitted that the complaint is liable to be quashed insofar as the petitioner is concerned.

4. Per contra, the learned counsel for the respondent submitted that the petitioner was also engaged in the chit business that was conducted by her along with her husband and on many occasions, the respondent had paid the subscription amount to the petitioner. The learned counsel submitted that the petitioner was actively involved in the business along with her husband and therefore, she is liable to be made as an accused in the complaint filed under Section 138 of Negotiable Instruments Act.

5. This Court has considered the submissions made on either side and perused the materials available on record.

6. In the present case, admittedly, the cheque has been drawn in favour of the respondent only by A1 who happens to be the husband of the petitioner. For the offence under Section 138 of Negotiable Instruments Act, it is only the drawer of the cheque who can be made as an accused. The only exception is provided under Section 141 of the Negotiable Instruments Act, where the accused person is a company or a partnership firm. In such cases, the concept of vicarious liability is imported and the persons who are in-charge and responsible for the day-to-day affairs of the business can also be made as accused persons, even though they may not be a signatory to the cheque.

7. This concept of vicarious liability will not apply when it comes to the case of any other concern like a sole proprietaryship. Those are cases where the cheque is drawn by the individual in his individual capacity and not on behalf of any company or partnership firm. Even if it is taken that the petitioner was also actively involved in the business along with her husband, that by itself will not be a ground to make the petitioner an accused in this case. In other words, the facts of this case will not fall within the requirements of Section 141 of the Negotiable Instruments Act.

8. In view of the above discussion, this Court has absolutely no hesitation to interfere with the proceedings before the Court below and accordingly, the proceedings in C.C.No.688 of 2018 before the FTC-III Metropolitan Magistrate, Saidapet, Chennai, is quashed insofar as the petitioner is concerned. This Criminal Original Petition is accordingly allowed and the Court below is directed to complete the

proceedings as against the first accused 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

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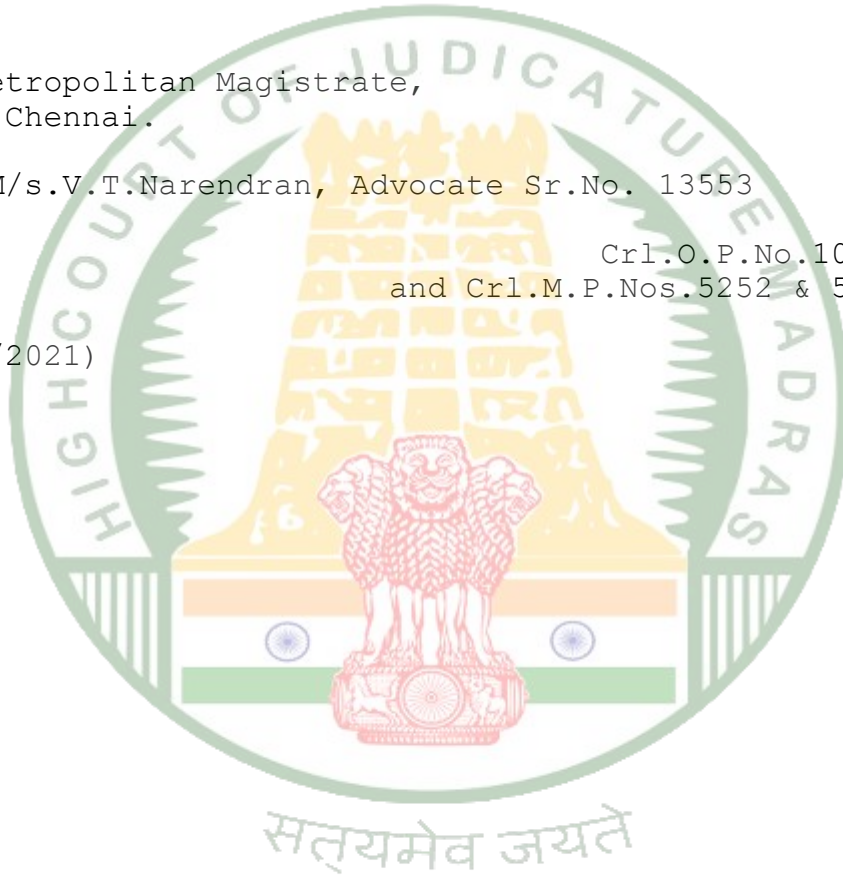
Sub Assistant Registrar

rli
To
FTC-III Metropolitan Magistrate,
Saidapet, Chennai.

+1 cc to M/s.V.T.Narendran, Advocate Sr.No. 13553

Crl.O.P.No.10148 of 2019
and Crl.M.P.Nos.5252 & 5258 of 2019

SKY(CO)
RMP(25/03/2021)



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