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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2021

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl.O.P.No.7479 of 2017

and

Crl.M.P.Nos.5405 &5406 of 2017

Mrs.Sangeetha

...Petitioner

Vs.

Mr.Segar

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to proceedings in S.T.C.NO.129 of 2017 on the file of the learned Judicial Magistrate No.II, Puducherry and quash the same.

For Petitioner : M/s.A.L.Ganthimathi

For Respondent : No appearance

O R D E R

This Criminal original petition has been filed to call for the records relating to proceedings in S.T.C.NO.129 of 2017 on the file of the learned Judicial Magistrate No.II, Puducherry and quash the same.

2. Heard the learned counsel for the petitioner and there is no representation on behalf of the respondent.

3. Learned counsel for the petitioner submitted that private complaint has been filed against the present petitioner who was arrayed as A2 in S.T.C.NO.129 of 2017 and proceedings were initiated under Sections 138 and 142 of the Negotiable Instruments Act, 1881. She further submitted that the cheque pertains to the joint account of the petitioner and her husband (A1). The petitioner(A2) cannot be made responsible for the dishonor and A2 cannot be made an accused when the cheque has not been signed by her. She further submitted that A2 is no way connected with receipt of any loan or issuance of any cheque. Therefore, merely maintaining a joint account along with her husband, she cannot be prosecuted for the offence under Sections 138 and 142 of N.I.Act. Hence, prayed to quash the proceedings.



3. This Court has perused the entire materials available on record. The specific case of the Defacto complaint is that A1 has borrowed an amount of Rs.4 lakhs to meet out his family and other expenses. In order to discharge the same, A1 has issued the above cheque. The mere allegation in the complaint itself indicate that the cheque was issued only by A1. He has borrowed the said amount for clearing the debt.

4. It is relevant to extract Section 138 of Negotiable Instruments Act, 1881, which reads as follows:

138. Dishonour of cheque for insufficiency, etc., of funds in the account.

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, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

5. On perusal above section makes it clear that maintaining the account by a person and issuing a cheque for any liability or debt is sine qua non for prosecution under Section 138 of N.I. Act. Admittedly, the petitioner herein has not issued any



cheque to the Defacto Complainant and as per the complaint, only her husband has issued a cheque towards debt which he borrowed. In such view of the matter, proceedings under Section 138 of N.I Act cannot be maintainable against her wife(A2) merely because she is a joint account holder and she has not received any amount in order to issue the cheque.

6. Accordingly, this Criminal Original Petition is allowed and prosecution against A2 cannot be maintained and the same is quashed. The Court below is directed to complete the proceedings as against A1 and dispose the main case within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

msv

To

The Judicial Magistrate No.II
Puducherry.

+1cc to M/s.A.L.Ganthimathi, Advocate, S.R.No.59137

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PL(CO)
RGA(03/12/2021)