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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2021

CORAM :

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl.O.P.No.25435 of 2017

and

Crl.M.P.Nos.14644 & 14645 of 2017

Kavitha

...Petitioner

Vs.

K.Vadivel

...Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the entire records in S.T.C.No.183 of 2017 on the file of the Judicial Magistrate No.I, Sankari, Salem District, and quash the same in so far as the petitioner is concerned.

For Petitioner : M/s.R.Hemalatha

For Respondent : Mr.C.Kulanthaivel

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.183 of 2017 on the file of the Judicial Magistrate No.I, Sankari, Salem District, filed for the offence under Section 138 of the Negotiable Instruments Act.

2.The present petitioner is arrayed as A2 in the proceedings initiated by the respondent/complainant for the offence under Section 138 of the Negotiable Instruments Act.

3.The case of the complainant is that the accused borrowed a sum of Rs.4,00,000/- as hand loan from the complainant and towards the said liability, the 1st accused, who is the husband of the 2nd accused/petitioner, issued a cheque on behalf of the 2nd accused, to the respondent/complainant, which when presented with the Bank, was returned unpaid for insufficiency of funds. Hence, after complying with the necessary conditions, the respondent initiated prosecution against both the accused for the offence under Section 138 of the Negotiable Instruments Act.

4.The main contention of the learned counsel for the petitioner/A2 is that, A2, the petitioner herein, has not issued any cheque, whereas, the husband of the petitioner, who is the 1st accused, has issued the cheque in question. In such view of the matter, she cannot be prosecuted for the offence under



Section 138 of the Negotiable Instruments Act.

5. Heard the learned counsel on either side and perused the materials available on record.

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6. On a perusal of the complaint filed by the respondent/complainant, in Para No.3 of the complaint, it is clearly stated that the cheque was issued only by the 1st accused, who is the husband of the petitioner. Though it is stated that the cheque was issued on behalf of the 2nd accused, the pleadings itself clearly show that the cheque was issued by the 1st accused.

7. It is relevant to note that, to initiate prosecution against a person for the offence under Section 138 of the Negotiable Instruments Act, the cheque should have been 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 and such cheque should have been returned unpaid for the various grounds stated under Section 138 of the Act. Therefore, the essential condition to initiate the prosecution under Section 138 of the Act is the issuance of the cheque by a person on an account maintained by him.

8. However, in the present case, the very complaint itself clearly indicates that the present petitioner/2nd accused has not issued any cheque on the account maintained by her. While such being the position, this Court is of the view that the prosecution as against the present petitioner/2nd accused is not sustainable in law and is liable to be quashed.

9. Accordingly, this Criminal Original Petition is allowed and as a sequel, the proceedings in S.T.C.No.183 of 2017 on the file of the Judicial Magistrate No.I, Sankari, Salem District, is quashed, insofar as the present petitioner/2nd accused alone is concerned. Consequently, connected miscellaneous petitions are closed.

10. The trial Court shall proceed against the 1st accused and dispose of the matter as expeditiously as possible.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mkn



To

1. The Judicial Magistrate No.I,
Sankari, Salem District.

2. The Chief Judicial Magistrate,
Salem.

+1cc to M/s.C.Prakasam, Advocate, S.R.No.61904

+1cc to M/s.C.Kulanthaivel, Advocate, S.R.No.61861

Crl.O.P.No.25435 of 2017

KSM(CO)

RGA(10/12/2021)