



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.11.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl O.P. (MD)No.16871 of 2021

and

Crl M.P. (MD)Nos.9115 & 9117 of 2021

P.Mahimadevi ... Petitioner/Accused No.1

Vs.

1.S.Iqbal ... Respondent/Complainant

2.Paramahamsan ... Respondent/Accused No.2

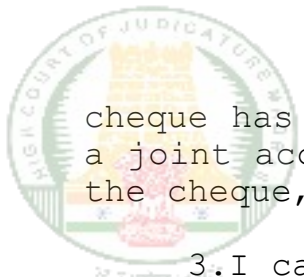
Prayer : This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records relating to the proceedings in S.T.C.No.56 of 2020 on the file of the Judicial Magistrate No.1, Madurai and quash the same.

For Petitioner : Mr.M.Mithun
For R1 : M/s.Mohamed Sherbudeen

ORDER

This Criminal Original Petition has been filed to quash the impugned proceedings in S.T.C.No.56 of 2020 on the file of the Judicial Magistrate No.1, Madurai. The petitioner is figuring as the first accused. She filed this O.P for quashing the impugned proceedings insofar as she is concerned. The first respondent instituted a private complaint against the petitioner and the second respondent herein for the offence under Section 138 of Negotiable Instruments Act. The complaint cheque was presented for collection by the complainant and it was returned with the endorsement "insufficient funds". The complainant issued statutory notice to the second respondent and the petitioner. After following the usual formalities, the present private complaint has been lodged. The jurisdictional court has taken cognizance of the offence under Section 138 of the N.I Act in STC No.56 of 2020 and issued notice to the petitioner. To quash the said complaint, this Criminal Original Petition has been filed.

2.The contention of the petitioner's counsel is that the cheque in question was drawn on an account jointly maintained by the petitioner and the second respondent. The second respondent is none other than the husband of the petitioner herein. The complaint



cheque has been signed only by the second respondent. Though it is a joint account and the name of the petitioner is also appearing in the cheque, the signature has been put only by the husband.

3.I carefully considered the rival contentions and went through the materials on record. The issue on hand is no longer res integra. The Hon'ble Supreme Court in the decision reported in **(2013) 8 SCC 71 (Aparna A.Shah vs. Sheth Developers P.Ltd)** held as follows :

"22)In the light of the above discussion, we hold that under Section 138 of the Act, it is only the drawer of the cheque who can be prosecuted. In the case on hand, admittedly, the appellant is not a drawer of the cheque and she has not signed the same. A copy of the cheque was brought to our notice, though it contains name of the appellant and her husband, the fact remains that her husband alone put his signature. In addition to the same, a bare reading of the complaint as also the affidavit of examination-in-chief of the complainant and a bare look at the cheque would show that the appellant has not signed the cheque."

4.The case on hand is squarely covered by the aforesaid decision of the Hon'ble Supreme Court. Hence, I quash the impugned proceedings insofar as the petitioner is concerned. The learned Trial Judge is directed to conclude the trial on merits and in accordance with law within a period of six months from the date of receipt of copy of this order. This Criminal Original Petition is allowed with the aforesaid direction. I make it clear that the petitioner has been exonerated only from criminal liability. If she had jointly borrowed any amount along with her husband from the complainant herein, the right of the complainant to institute a civil suit for recovery is left open. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

btr/gbg

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

<https://hcservices.ecourts.gov.in/hcservices/>



To

The Judicial Magistrate No.1, Madurai

Crl O.P. (MD) No.16871 of 2021
and

Crl M.P. (MD) Nos.9115 & 9117 of 2021
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