IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2022

CORAM:

THE HONOURABLE Ms.JUSTICE **R.N.MANJULA**

Crl.O.P.No.21812 of 2021
and
Crl.MP.No.11837 of 2021

Kalaivani Kumar
... Petitioner

-Vs-

N.D.Ravikumar
... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, praying to call for the records relating to C.C.No.4767 of 2016 on the file of the Metropolitan Magistrate, Fast Court III, Saidapet, Chennai and quash the same.

For Petitioner : Mr.R.T.Vijayaraaghavan

For Respondent : Mr.S.Baskaran

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ORDER

This Criminal Original Petition has been preferred to call for the records pertaining to C.C.No.4767 of 2016 on the file of the learned

Metropolitan Magistrate, FTC-III, Saidapet, Chennai and quash the same as illegal.

2. The petitioner is the second accused. The case in C.C.No.4767 of 2016 has been taken on file on the complaint given by the respondent against the petitioner and her husband for the offence of dishonour of cheque under Section 138 of the Negotiable Instruments Act. The allegations of the respondent is that the first accused had signed the cheque dated 09.05.2015 for a sum of Rs.30 lakhs and issued it to the respondent towards discharging the debt availed by the accused 1 and 2. The account in the drawers Bank is a joint account held in the name of both the accused. Since the cheque was dishonored, after complying the legal formalities, the petitioner had filed the complaint under Section 138 of Negotiable Instruments Act for initiating criminal action against the accused.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

4. The learned counsel for the petitioner submitted that though the account was a joint account held by both the accused, the second accused is not the signatory to the impugned cheque. He relied on the decision of the

Hon'ble Supreme Court held in C.A.No.8132013 in the case of ***Aparna A.Shah Vs. M/s.Sheth Developers Pvt. Ltd & Anr.,*** in support of his above contention. In the said judgment, it has been held as under:-

> "***23.*** *We also hold that under Section 138 of the N.I. Act, in case of issuance of cheque from joint accounts, a joint account holder cannot be prosecuted unless the cheque has been signed by each and every person who is a joint account holder. The said principle is an exception to Section 141 of the N.I. Act which would have no application in the case on hand. Te proceedings filed under Section 138 cannot be used as an arm twisting tactics to recover the amount allegedly due from the appellant. It cannot be said that the complainant has no remedy against the appellant but certainly not under Section 138. The culpability attached to dishonour of a cheque can, in no case "except in case of Section 141 of the N.I.Act" be extended to those on whose behalf the cheque is issued. This Court reiterates that it is only the drawer of the cheque who can be made an accused in any proceeding under Section 138 of the Act. Even the High Court has specifically recorded the stand of the appellant that she was not the signatory of the cheque but rejected the contention that the amount was not due and payable by her solely on the ground that the trial is in progress. It is to be noted that only after*

issuance of process, a person can approach the High Court seeking quashing of the same on various grounds available to him. Accordingly, the High Court was clearly wrong in holding that the prayer of the appellant cannot even be considered. Further, the High Court itself has directed the Magistrate to carry out the process of admission/denial of documents. In such circumstances, it cannot be concluded that the trial is in advanced stage."

5. The learned counsel for the respondent cited the judgment of the Hon'ble Supreme Court held in ***Alka Khandu Avhad Vs. Amar Syamprasad Mishra & Anr*** and submitted that if the account has been held jointly and if a party holding the account is the signatory of the cheque, the joint account holders are liable under Section 138 of Negotiable Instruments Act. But in the said judgment, the Hon'ble Supreme Court has held only as under :-

"......... Section 138 of the NI Act does not speak about the joint liability. Even in case of a joint liability, in case of individual persons, a person other than a person who has drawn the cheque on an account maintained by him, cannot be prosecuted for the offence under Section 138 of the NI Act. A person might have been jointly liable to pay the debt, but if

such a person who might have been liable to pay the debt jointly, cannot be prosecuted unless the bank account is jointly maintained and that he was a signatory to the cheque."

6. The above judgment also confirms the contention of the petitioner that in a joint account held by the individuals only a person, who had signed the cheque is liable for criminal action and not the other. It has been held that Section 138 does not speak about the joint liability. It means that joint liability is a theory of civil law and hence, it cannot be invoked while prosecuting the executants of the cheque for committing offences under Section 138 of Negotiable Instruments Act. Admittedly, the petitioner has not signed the cheque though she held the account jointly with the first accused. Hence, no criminal liability can be fastened against the joint account holder, unless the said person is also a signatory of the impugned cheque.

7. In view of the above discussions, this Criminal Original Petition is allowed and the proceedings in C.C.No.4767 of 2016 on the file of the Metropolitan Magistrate, Fast Court III, Saidapet, Chennai is hereby quashed. Consequently, connected miscellaneous petition is closed.

27.09.2022

kmi

<u>R.N.MANJULA, J,</u>

kmi

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