



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2022

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P. (MD)No.1145 of 2022

&

CrI.M.P. (MD)No.827 of 2022

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B.Kungumapriya ...Petitioner/Accused no.2
Vs.

1. V.Balasubramanian ... 1st Respondent / Complainant

2. M.R.S.Balajee ... 2nd Respondents / Defacto complainant

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C.to call for the records in connection with the impugned complaint in S.T.C No.818 of 2021 pending on the file of learned Fast Track Court (Magisterial Level), Karur and quash the same in so far as the petitioners are concerned.

For Petitioner : Mr.S.Sarvagan Prabhu

For Respondents : Mr.V.Balaji

ORDER

This Criminal Original Petition has been filed to quash the complaint in S.T.C No.818 of 2021, pending on the file of learned Judicial Magistrate, Fast Track Court (Magisterial Level), Karur.

2.In this case, there are totally two accused, in which, the petitioner is arrayed as the second accused, on the complaint lodged by the first respondent herein. The petitioner is the wife of the first accused. The first respondent lodged complaint alleging that the first accused is the Proprietor of Sri Mahalakshmi Paper Industries and the second accused is the wife of first accused and they are jointly running the business in the name and style of Sri Mahalakshmi Paper Industries.

3.While being so, the first accused borrowed a sum of Rupees Ten lakhs as loan, in the name of second accused for their business purpose. In order to repay the same, the first accused issued a cheque in the name of Sri Mahalakshmi Paper Industries and same was presented for collection. The said cheque was dishonoured for the reason 'funds insufficient'. After causing statutory notice, the first respondent lodged a complaint, for the offence punishable under Section 138 of Negotiable Instruments Act.



4.The learned counsel for the petitioner would submit that there is absolutely no legally enforceable debt by the petitioner herein, since the petitioner is nowhere connected with the said business. Even according to the first respondent, her husband is the sole Proprietor of the Sri Mahalakshmi Paper Industries, alleged cheque was issued in the name of Sri Mahalakshmi Paper Industries, by its Proprietor. In fact, on receipt of the statutory notice from the first respondent, the petitioner has categorically replied that she is noway connected with the Sri Mahalakshmi Paper Industries, neither as Proprietor nor the signatory to the cheque. In support of his contention he relied upon the decision of **Hon'ble Supreme Court in 2021(1)566 SCC**, in the case of **Alka Khandu Avhad vs Amar Syamprasad Mishra**.

5.The learned counsel for the first respondent submitted that admittedly both the accused are running the business in the name and style of Sri Mahalakshmi Paper Industries. In fact, the loan amount which was borrowed by the accused persons transferred only through the petitioner's account, for their business purpose. Both the accused have agreed to repay the same in 36 monthly instalments at Rs.42,800/- per month and paid monthly instalments for 16 months, only through the account of the second accused, viz., the petitioner herein. Therefore, the petitioner herein is fully acquainted with the business and she is equally liable to be punished for the offence under Section 138 of Negotiable Instruments Act.

6.There are two accused in this case, in which, the petitioner is added as a second accused and she is the wife of first accused. The first accused is the Proprietor of Sri Mahalakshmi Paper Industries. The alleged cheque was issued on behalf of Sri Mahalakshmi Paper Industries, in the capacity of Proprietor, by the first accused. Though, loan borrowed by both the accused and loan amount was transferred in favour of the petitioner's account, alleged cheque was issued by the first accused. Admittedly, the petitioner is neither Proprietor nor the signatory to the cheque.

7.In this regard, the learned counsel for the petitioner relied upon the Judgment, **2021(1)566 SCC**, in the case of **Alka Khandu Avhad vs Amar Syamprasad Mishra**. in which the Hon'ble Supreme Court of India held that on a fair reading of Section 138 of the Negotiable Instruments Act, before a person can be prosecuted, the following conditions are required to be satisfied:

- "7. i) that the cheque is drawn by a person and on an account maintained by him with a banker;
- ii) for the 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



iii) the said cheque 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."

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Therefore, a person who is the signatory to the cheque and the cheque is drawn by that person, on an account maintained by him and the cheque has been issued for the discharge, in whole or in part, of any debt or other liability and the said cheque has been returned by the bank unpaid, such person can be said to have committed an offence. Section 138 of the Negotiable Instruments 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.

8. In the light of the above decision, in the case on hand, the alleged cheque was not issued from the joint account of A1 & A2. It was issued on behalf of Sri Mahalakshmi Paper Industries as a Proprietor, signed by the first accused. Hence, the petitioner is noway liable to be punished for the offence under Section 138 of Negotiable Instruments Act, since no offence is made out against the petitioner herein.

9. In view of the above, this Criminal Original Petition is allowed and the complaint in S.T.C No.818 of 2021 pending on the file of learned Fast Track Court (Magisterial Level), Karur is quashed as against the petitioner /second accused alone. The trial court is directed to complete the trial as against the first accused, within six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PNM



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.

To:

1.The Judicial Magistrate,
Fast Track Court (Magisterial Level), Karur.

+1 CC to M/s.S.SARVAGAN PRABHU, Advocate (SR-10810[F] dated 09/03/2022)

ORDER IN
Crl.O.P. (MD)No.1145 of 2022
&
Crl.M.P. (MD)No.827 of 2022
08.03.2022

srr(CO)
TR(01.04.2022) 4P 3C