



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.04.2022

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P(MD)No.1903 of 2022

and

CrI.M.P(MD)No.1391 of 2022

WEB COPY

1.M.R.Tamilselvam

2.T.Pradeepa

... Petitioners/Accused Nos.1 & 2

Vs.

L.Prabhakaran

... Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to the charge sheet in C.C.No.1203 of 2021 on the file of the Judicial Magistrate No.1, Trichy and quash the same.

For Petitioners : Mr.B.Jameel Arasu

For Respondent : Mr.K.S.Kathiravan

ORDER

This Criminal Original Petition has been filed to quash the charge sheet in C.C.No.1203 of 2021 on the file of the Judicial Magistrate No.1, Trichy initiated for the offence under Section 138 of NI Act.

2.The crux of the complaint is that the respondent and the petitioners/accused are family friends. The first accused is the husband and the second accused is the wife of the first accused. During third week of March 2020, the petitioners have jointly requested the respondent for their urgent need of money and borrowed a sum of Rs.14 lakhs for construction of their house on 07.04.2020. They have also agreed to repay said amount with interest at 18% per annum. In order to repay the said amount, the first accused signed the cheque and issued in favour of the respondent for the sum of Rs.14 lakhs. It was presented for collection and the same was returned dishonoured with the remarks ''funds insufficient''. After issuing statutory notice to the accused persons, the respondent initiated the proceedings under Section 138 of NI Act.

3.Though the quash petition is filed for both the petitioners, at the time of hearing on 01.02.2022, the learned counsel for the petitioners withdrew the quash petition insofar as the first accused is concerned. Now the second petitioner, who is being the wife of the first accused arrayed as second accused. Admittedly, the cheque dated 31.08.2021 was issued by the first accused from their joint account of both the accused. They are permitted to issue cheque



with one of the account holder signature. Therefore, the first accused alone signed the cheque and issued the same infavour of the respondent herein. Though the respondent stated in the complaint that both the accused are party to the borrowed loan, in order to re-pay the same, the first accused alone issued the cheque.

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4. Therefore, the person who draws the cheque is to be punished and the person who had joint account to the person who issued cheque cannot be punished under Section 138 NI Act. In the case on hand, the petitioner happens to the wife of the first accused and also happens to the joint account holder, she is also be added as accused in this proceedings initiated under Section 138 NI Act. Therefore, the petitioner is being non signatory to the cheque, she is not liable to punish under Section 138 of NI Act.

5. In view of the above, the Criminal Original Petition is allowed and the proceedings in C.C.No.1203 of 2021 on the file of the Judicial Magistrate No.1, Trichy, is hereby quashed as against the second petitioner/A2 alone. The trial Court is directed to proceed with the trial as against the first petitioner/A1 and complete the trial within a period of 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)

vsd

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
The Judicial Magistrate No.1, Trichy.

+1 CC to M/s.K.S.KATHIRAVAN, Advocate (SR-19473[F] dated 19/04/2022)

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SRK(CO)GC(23.05.2022) 2P 3C

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