



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 06.01.2022

PRONOUNCED ON: 12.01.2022

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

Crl.O.P. (MD)No.6184 of 2019

and

Crl.M.P. (MD)Nos.4052 and 4053 of 2019

Jeyakumar : Petitioner/Sole Accused

Vs.

S.Sunilarani : Respondent / Complainant

PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for the records in S.T.C.No.295 of 2018, on the file of the Fast Track Court (Magistrate Level), Eraniel, Kanyakumari District and quash the same as illegal.

For Petitioner : Mr.C.Mayilvahana Rajendran

For Respondent : No Appearance

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records in S.T.C.NO.295 of 2018, pending on the file of the Fast Track Court (Magisterial Level), Eraniel, Kanyakumari District and quash the same.

2. The petitioner is the sole accused and the respondent has filed a private complaint under Section 200 Cr.P.C., for the alleged offence under Section 138 r/w 142 of the Negotiable Instruments Act.

3. The case of the complainant is that the petitioner/accused borrowed a sum of Rs.2,50,000/- on 04.06.2018 for his family expenses from the complainant and issued a post-dated cheque towards repayment of the loan amount, that when the cheque was presented for collection, the same was returned for want of sufficient funds in the bank account of the accused that though the complainant sent a legal notice dated 04.08.2018 to the accused demanding the payment of the amount covered by the cheque, the accused has managed to return the legal notice as unserved, hat the accused has neither chosen to send any reply nor made any payment and that therefore, the complainant was forced to file the above complaint.



4. Admittedly, the petitioner and the respondent are neighbours. The main contention of the petitioner is that he has neither borrowed any amount nor issued any cheque in favour of the complainant, that the petitioner has neither signed the cheque nor issued the same in favour of the complainant, that the petitioner is in no way connected with the cheque in dispute and that therefore, the very filing of the complaint and the very taking cognizance of the case by the learned Magistrate are legally unsustainable.

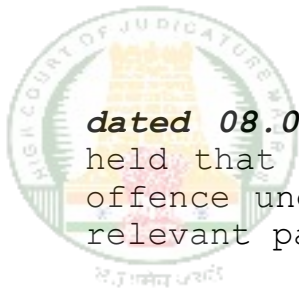
5. The learned Counsel for the petitioner would further contend that the cheque in dispute belonged to the petitioner's wife Subha Jeyakumar, that the said cheque in question was issued from the bank account of Subha Jeyakumar, that the petitioner's wife Subha Jeyakumar had died on 28.03.2018 even prior to the date of the cheque in question and that therefore, the complainant has initiated the prosecution against the petitioner abusing the process of law.

6. It is evident from the records that the cheque in question bearing No.075032 is drawn on the State Bank of Travancore, Alanji, Kanyakumari District and the Savings Bank A/c No.67145334500 stands in the name of Mrs.Subha Jeyakumar. It is pertinent to note that the cheque was also signed by Subha Jeyakumar and that the name of the drawer has been printed in the cheque and the signature was subscribed above the same. The petitioner has also produced the copy of the death certificate of his wife Subha Jeyakumar and whereunder it is evident that the said Subha Jeyakumar died on 28.03.2018. As rightly pointed out by the learned Counsel for the petitioner, the cheque in dispute was dated 04.07.2018 ie., subsequent to the death of the said Subha Jeyakumar. It is further evident that the respondent had sent a legal notice dated 04.08.2018 demanding the payment of amount covered by the cheque from the petitioner herein by alleging that the petitioner had borrowed the amount and issued the cheque from his bank account and the same was returned as funds insufficient. Thereafter the complaint was also lodged as if the petitioner alone had issued the cheque in dispute and failed to pay the amount.

7. It is pertinent to mention that the complainant has produced the cheque in question along with the complaint. Even assuming that the complainant, despite knowing that the cheque was signed by the petitioner's wife and that she had died, has filed the above complaint, this Court is at loss to understand as to how and why the learned Magistrate, without considering the basic aspects, has taken cognizance for the offences under Section 138 r/w 142 of the Negotiable Instruments Act against the petitioner.

8. At this juncture, it is necessary to refer the recent decision of the Honourable Supreme Court in **Alka Khandu Avhad Vs. Amar Syamprasad Mishra & Anr. (CRIMINAL APPEAL NO. 258 OF 2021,**

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

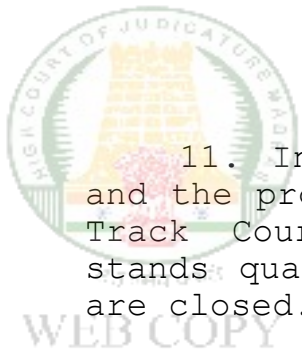


dated 08.03.2021), wherein the Hon'ble Apex Court has specifically held that the drawer of the cheque alone can be prosecuted for the offence under Section 138 of the Negotiable Instruments Act and the relevant passage is extracted hereunder:

"7. On a fair reading of Section 138 of the NI Act, before a person can be prosecuted, the following conditions are required to be satisfied: 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. 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 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."

9. In the case on hand, admittedly the petitioner is not the signatory to the cheque and the cheque was drawn by the petitioner's wife Subha Jeyakumar on an account maintained by her. It is not the case of the complainant that the petitioner and his wife were holding a joint account. Even assuming that they were holding of the joint account, the Hon'ble Supreme Court has specifically held that Section 138 of the Negotiable Instruments Act does not speak about the joint liability and even in case of a joint liability, in case of individual persons, a person other than a person who has drawn the cheque cannot be prosecuted for the offence under Section 138 of the Negotiable Instruments Act.

10. Considering the above, the very complaint filed against the petitioner herein for the offence under Section 138 r/w 142 of the Negotiable Instruments Act can only be considered as an abuse of process of law and the same is liable to be quashed.



11. In the result, the Criminal Original Petition is allowed and the proceeding in S.T.C.No.295 of 2018, on the file of the Fast Track Court (Magisterial Level), Eraniel, Kanyakumari District stands quashed. Consequently the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

SSL

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, Fast Track Court (Magistrate Level), Eraniel, Kanyakumari District.

ORDER MADE IN
Crl.O.P.(MD)No.6184 of 2019
12.01.2022

kk(CO)
TR(07.02.2022) 4P 2C