BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 20.01.2022
PRONOUNCED ON: 25.01.2022
CORAM
THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

Crl.O.P.(MD)No.21218 of 2018
and
Crl.M.P.(MD)Nos.9807 and 9808 of 2018

S.Aarthy : Petitioner/ Accused

Vs.

P.Murugavel : Respondent / Complainant

PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for the records and quash the proceedings in C.C.No.135 of 2018, on the file of the Judicial Magistrate No.II, Dindigul.

For Petitioner : Mr.C.M.Arumugam
For Respondent : Mr.S.Karthick Subramanian

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records in C.C.No.135 of 2018, pending on the file of the Judicial Magistrate Court No.II, Dindigul and quash the same.

2. The petitioner is the accused in the complaint filed in C.C.No.135 of 2018, on the file of the Judicial Magistrate Court No.II, Dindigul, by the respondent for the offence under Section 138 r/w 142 of the Negotiable Instruments Act.

3. The case of the respondent/complainant is that the petitioner and the respondent are family friends and due to that acquaintance, the petitioner borrowed a sum of Rs.3,00,000/- from the respondent on 10.12.2017 to settle her sundry debts agreeing to repay the said amount within a period of one month, that the petitioner has issued a cheque bearing No.193277 to the respondent as security, that the respondent as per the instructions of the petitioner, presented the cheque for collection on 08.01.2018, but the same was returned as the signature of the drawer differs, that the respondent has sent a legal notice dated 22.01.2018 demanding the payment of the amount covered by the cheque, that the

petitioner, after receiving the said notice, has sent a reply notice dated 09.02.2018 with false allegations, that since the cheque amount was wrongly mentioned as Rs.3,25,000/- in the legal notice, the respondent has sent a rejoinder notice dated 16.02.2018, that though the petitioner has received the same, she has not chosen to repay the amount nor sent any reply and that therefore, the respondent was constrained to prefer the private complaint.

4. The main contention of the petitioner/accused is that the cheque in question is not belonging to her and the same belongs to her husband Saravanavel. The learned Counsel for the petitioner would submit that immediately after the receipt of the legal notice of the respondent, the petitioner has sent a reply specifically stating that the respondent by visiting their residence, has stolen the cheque of her husband, that the respondent had forged the signature of the petitioner in the said cheque and that the petitioner has neither borrowed any amount nor issued any cheque to the respondent. He would further submit that after the receipt of the said reply notice of the petitioner, the respondent has sent a rejoinder notice dated 16.02.2018 and whereunder, he had only stated that the cheque amount was wrongly mentioned as Rs.3,25,000/- instead of Rs.3,00,000/- in the legal notice and he has not disputed or denied the averments raised in the reply notice.

5. The learned Counsel for the petitioner would further submit that even in the complaint, the respondent has specifically alleged that the cheque was only belonging to the petitioner and that with an intention to cheat the respondent, she had purposely put a different signature in the cheque in question. The learned Counsel for the petitioner would submit that in the bank statement given by the Indian Overseas Bank, the petitioner's husband Saravanavel is shown as the account holder and that the cheque bearing No.193277 was presented for collection in the said account and the same was returned and that therefore, since the cheque in question is not belonging to the petitioner and she is not the drawer of the cheque, the question of mulcting the liability and filing of complaint under Section 138 r/w 142 of the Negotiable Instruments Act does not arise at all.

6. The learned Counsel for the respondent/complainant would submit that only after the receipt of the reply notice, the respondent came to know that the petitioner, with the sole intention to cheat the respondent, had put a different signature and gave it to the respondent and that is why, the cheque was returned for the reason as the signature of the drawer differs. He would further submit, by citing the judgment of the Honourable Supreme Court in ***M/S Laxmi Dyechem vs State Of Gujarat & Others,*** reported in ***(2012)13 SCC 375,*** that the above aspects can be gone into only at the trial and as such, the question of quashing the complaint itself at this stage does not arise at all. He would further submit that whether

the cheque in question was belonging to the petitioner or her husband, whether the cheque in question was issued from the bank account maintained by the petitioner's husband, what was the actual reason for the dishonour of the cheque, whether the petitioner had purposely and wantonly put a different signature so as to cheat the respondent are the aspects that cannot be gone into at this stage and are the matter for trial.

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

8. In the case on hand, it is evident from the records that the disputed cheque is not belonging to the petitioner and the same was not drawn by the petitioner on an account maintained by her. It is not the case of the complainant that the petitioner and her husband were jointly liable or that they were holding joint account in the Indian Overseas Bank. As per the legal dictum of the Honourable

Supreme Court above referred, 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. Moreover, as rightly contended by the learned Counsel for the petitioner, the respondent in his complaint has not averred that the petitioner had committed an offence of cheating under Section 420 I.P.C., and admittedly, the learned Magistrate has taken cognizance of the case only for the offence under Section 138 r/w 142 of the Negotiable Instruments Act. Since the cheque in question was not drawn by the petitioner on an account maintained by her, the question of considering the contention of the respondent that the petitioner had purposely and wantonly put a different signature in the cheque and thereby cheated the respondent does not arise at all.

9. As rightly contended by the learned Counsel for the petitioner, though the petitioner has specifically stated in her reply notice that the cheque in dispute is not belonging to her and the same belongs to her husband and that the same was stolen by the respondent, the respondent in his rejoinder notice or in his complaint filed under Section 200 Cr.P.C., has not specifically disputed the same. It is pertinent to note that even after coming to know that the disputed cheque was not drawn in the bank account maintained by the petitioner, the respondent in his complaint has raised allegations against the petitioner as if the cheque was belonging to her and she had purposely put a different signature in the disputed cheque.

10. From the above discussion, this Court is of the view that the very complaint lodged by the respondent for the offence under Section 138 of the Negotiable Instruments Act against the petitioner 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 C.C.No.135 of 2018 on the file of the Judicial Magistrate No.II, Dindigul as against the petitioner stands quashed. Consequently the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AE)

// 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 No.II, Dindigul.

+1 CC to M/s.C.M.ARUMUGAM, Advocate (SR-2695[F] dated 27/01/2022)

Crl.O.P.(MD)No.21218 of 2018
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RD/CK(07.02.2022) 5P 3C