



CrI.O.P.(MD)No.19180 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 30.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CrI.O.P.(MD)No.19180 of 2019

and

CrI.M.P.(MD)Nos.11251 and 11252 of 2019

Duraivel Rajan

... Petitioner/Accused No.1

vs.

R.Shyamala

... Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records pertaining to the proceedings in S.T.C.No.3610 of 2019 on the file of the learned Judicial Magistrate No.V, Tiruchirappalli and quash the same as against the petitioner.

For Petitioner : Mr.D.S.Harron Rasheed

For Respondent : Mr.S.Deenadhayalan

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records pertaining to the case in S.T.C.No.3610 of 2019 pending on the file of the learned Judicial Magistrate No.V, Tiruchirappalli and quash the same as against the



petitioner.

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2.The petitioner is the first accused in S.T.C.No.3610 of 2019 filed by the respondent and is pending on the file of the learned Judicial Magistrate No.V, Tiruchirappalli.

3.The respondent has filed a private complaint under Section 200 of Cr.P.C., against two persons including the petitioner herein for the alleged offence under Section 138 r/w 142 of the Negotiable Instrument Act and the case was taken on file in S.T.C.No.3610 of 2019 on the file of the said Court.

4.The main contention of the petitioner is that the petitioner and his wife/A2 opened a joint account in ICICI Bank, Thillainagar Branch, Tiruchirappalli, that the cheque is in dispute bearing No.086615, dated 11.03.2019 was admittedly signed by the second accused and that therefore, Section 138 of N.I. Act would not attract as against the petitioner.

5.The learned counsel for the petitioner has relied on the Judgment of the Hon'ble Supreme Court in *Alka Khandu Avhad Vs. Amar*



Syamprasad Mishra and 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.”

6.The learned counsel has also relied upon the judgment reported in **2013 (2) MWN (Cr.) DCC 97 (SC) Aparna A.Shah Vs. Sheth Developers Pvt Ltd and another** and the relevant paragraphs are reproduced hereunder:-

20.In Bandeep Kaur v.S.Avneet Singh 2008 (2) PLR 796, in a similar situation, learned Single Judge of the Punjab and Haryana High Court held that in case the drawer of a Cheque fails to make the payment on receipt of a notice, then the provisions of Section 138 of the Act could be attracted against him only. Learned Single Judge further held that though the cheque was drawn to a joint Bank account which is to be operated by anyone i.e., the petitioner or by her husband, but the controversial document is the cheque, the liability regarding dishonouring of which can be fastened on the drawer of it. After saying so, learned Single Judge accepted the plea of the petitioner and quashed the proceedings insofar as it relates to her and permitted the complainant to proceed further insofar as against others.

21.In the light of the principles as discussed in the earlier paras, we fully endorse the view expressed by the learned judges of the Madras, Delhi and Punjab & Haryana High Courts.



22. *In the light of the above discussion, we hold that under Section 138 of the Act, it is only the drawer of the Cheque who can be prosecuted. In the case on hand, admittedly, the Appellant is not a drawer of the cheque and she has not signed the same. A copy of the Cheque was brought to our notice, though it contains name of the Appellant and her husband, the fact remains that her husband alone put his signature. In addition to the same, a bare reading of the complaint as also the Affidavit of examination-in-chief of the complainant and a bare look at the cheque would show that the appellant has not signed the cheque.*

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. The 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. 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. The 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.”

7.The above decisions are squarely applicable to the case on hand.

As already pointed out, the petitioner is not the signatory to the cheque in dispute, but on the other hand, the same was drawn by the second accused. As per the dictum of the Hon'ble Supreme Court, even in case of joint liability, the drawer of the cheque alone can be prosecuted and a person other than the person who has drawn the cheque cannot be prosecuted for the offence under Section 138 of N.I. Act.

8.Considering the above, this Court has no hesitation to hold that the complaint lodged by the respondent for the offence under Section 138



of N.I. Act against the petitioner is legally unsustainable and the same is liable to be quashed.

9.In the result, the Criminal Original Petition is allowed and the impugned proceedings in S.T.C.No.3610 of 2019 on the file of the learned Judicial Magistrate No.V, Tiruchirappalli, as against the petitioner is quashed. However, the case has to be proceeded as against the other accused. Considering the fact that the case is pending from 2019 onwards, the learned Judicial Magistrate No.V, Tiruchirappalli, is directed to complete the trial and dispose of the case as expeditiously as possible, preferably, within a period of two months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

30.06.2022

Index : Yes/No

Internet : Yes/No

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To

1.The Judicial Magistrate No.V,
Tiruchirappalli.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

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