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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2023

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.8956 of 2023
and Crl.M.P.No.5735 of 2023

R.Subash

.. Petitioner

Vs.

C.Vijay Anand

..Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in relating tot he proceedings in S.T.C.No.2465 of 2022 on the file of the Fast Track Court I, (Metropolitan Magistrate), Allikulam at Egmore and quash the same as against the petitioner.

For Petitioner : Mr.S.Anil Sandeep

For Respondent : Mr.J.Chelladurai Caldwell

ORDER

This petition has been filed to quash the proceedings in STC No.2465 of 2022 pending on the file of the Fast Track Court-I (Metropolitan Magistrate), Allikulam at Egmore.



2.The respondent has filed a complaint against the petitioner and another for the offence under Section 138 of the Negotiable Instruments Act. The petitioner has been arrayed as A2 in the complaint.

3.Heard the learned counsel for the petitioner and the learned counsel for the respondent.

4.The main ground that was urged before this Court is that A1 is the signatory in the cheque and the said cheque was issued by A1 in her individual capacity. In view of the same, it was contended that the complaint cannot be sustained as against A2 who is not the drawer of the cheque.

5.It is seen from the complaint that loan was obtained from the complainant and it was not repaid back. A legal notice was sent to A1 and her husband regarding the loan taken and a cheque is said to have been issued by A1, who is the Power of Attorney Agent of A2. In view of the same, the agent and the principal have been arrayed as an accused in this case.



6. It is very clear from the language used under Section 138 of the Negotiable Instruments Act that it is only the drawer of the cheque who can be made as an accused. The only exception is provided under Section 141 of the Negotiable Instruments Act where the Directors/Partners can be made vicariously liable for the debt/liability of the Company or the partnership Firm, as the case may be. Whatever is the understanding between the parties, by no stretch, the petitioner (A2) can be made as an accused in this case. This is more so, since A1 had drawn the cheque in favour of the respondent in her individual capacity. Therefore, the continuation of the proceedings as against the petitioner (A2) will result in abuse of process of Court which requires the interference of this Court under Section 482 of Cr.P.C. Accordingly, the proceedings in STC No.2465 of 2022 on the file of the Fast Track Court-I (Metropolitan Magistrate), Allikulam at Egmore, is hereby quashed insofar as the petitioner is concerned. There shall be a direction to the Court below to complete the proceedings in STC No.2465 of 2022, within a period of three months from the date of receipt of copy of this order.



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N.ANAND VENKATESH, J

SSR

9.In the result, this criminal original petition is allowed with the above directions. Consequently, connected miscellaneous petition is closed.

09.08.2023

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

ssr

To

1.The Fast Track Court I, (Metropolitan Magistrate), Allikulam at Egmore.

2.The Public Prosecutor

High Court of Madras, Madras.

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