



Crl.O.P.No.8412 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.8412 of 2021
and
Crl.M.P.Nos.5549 & 5550 of 2021

V.Thenmozhi

... Petitioner

Vs.

M.Duraisamy

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to call for the records culminated in S.T.C.No.31 of 2018 on the file of the learned Judicial Magistrate, Kangayam.

For Petitioner : M/s.B.Mohan

For Respondents : M/s.P.Navaneetha Krishnan
for sole respondent.



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ORDER

The petition is to quash the private complaint filed under Section 138 of the Negotiable Instruments Act.

2. It is alleged in the complaint that the petitioner had issued a cheque for Rs.10,00,000/- towards discharge of her liability towards the complainant/respondent.

3. The learned counsel for the petitioner would submit that the cheque would show that it was issued on behalf of a partnership firm, namely, “M/s.SRI ASTALAKSHMI TEX” and the petitioner was authorized signatory of the said partnership firm. The learned counsel also relied upon the certificate issued by the Registrar of Firms to show that the said “M/s.SRI ASTALAKSHMI TEX” is a partnership firm. The learned counsel therefore submitted that since the partnership firm has not been arrayed as an accused, the petitioner who can only be vicariously liable for the offence committed by the partnership firm cannot be prosecuted separately and hence prayed for quashing of the complaint.



4.The learned counsel for the complainant submitted that the question as to whether "M/s.SRI ASTALAKSHMI TEX" is a partnership firm or a proprietary concern has to be adjudicated only before the Trial Court. The petitioner has not produced the partnership deed and it cannot be ascertained as to whether the petitioner is a partner in the said firm. Further, the petitioner had not responded to the statutory notices issued by the respondent.

5. This Court is of the view that it is no doubt true that if a cheque has been issued by a partnership firm and the partnership firm is not arrayed as an accused and only the partner is shown as an accused, the complaint is not maintainable. However, the question as to whether the said "M/s.SRI ASTALAKSHMI TEX" is a partnership firm or not and whether the petitioner is a partner in the said firm have to be adjudicated only before the Trial Court. It is for the petitioner to substantiate the claim before the Trial Court. Hence, this Court is not inclined to entertain this quash petition.

6. Accordingly, this Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed.



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7. Since the petitioner is lady, aged about 50 years, this Court dispenses with the petitioner's appearance before the Trial Court, unless the learned Judicial Magistrate deems her presence necessary for the progress of the trial.

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Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
shr

To.

The Judicial Magistrate, Kangayam.



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SUNDER MOHAN. J,

shr

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