IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2023

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THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

Crl.O.P.No.20818 of 2021
&
Crl.M.P.No.11311 of 2021

P. Priyadarshini ... Petitioner

Vs

S. Gangatharan ... Respondent

Prayer: Criminal Original Petition filed under section 482 of Cr.P.C., to call for the records relating to the impugned further proceedings in STC.No.3865 of 2021 on the file of the Judicial Magistrate Court No.IV, Salem and quash the same.

For Petitioner : Mr. S. Sriram
for Mr.K. Govi Ganesan
For Respondent : Mr.V.R.Appaswamy

ORDER

This Criminal Original Petition is filed to call for the records relating to the impugned further proceedings in STC.No.3865 of 2021 on the file of the Judicial Magistrate Court No.IV, Salem and quash the same.

2. The learned counsel for the petitioner submitted that the petitioner is an accused in STC.No.3865 of 2021 on the file of Judicial Magistrate No.IV, Salem. The respondent/complainant filed a complaint against the petitioner for the offence under section 138 of Negotiable Instruments Act for dishonouring of cheque issued by the petitioner for a sum of Rs.20 lakhs. According to the respondent, the petitioner borrowed a sum of Rs.20 lakhs on 31.08.2020 and for security, she issued a cheque bearing No.303681 on 31.08.2020 drawn on Pallavan Grama Bank and when the said cheque was presented for collection, it got dishonoured and returned with an endorsement “Funds Insufficient”. He submitted that the disputed cheque is issued by the petitioner on behalf of Universal Creation and the same was signed by the petitioner as proprietor of the said Universal Creation. Though the cheque has been signed by the petitioner as Proprietor of Universal Creation, the cheque belongs to Pallavan Grama Bank, Gugai Branch, Salem having account No. ' 10021875827 ' and the Account number stands in the name of one Geetha, which shows that the abovesaid account is maintained by the abovesaid Geetha and to prove the same, the Bank Pass book of Geetha is produced. Further, in certificate of

Registration issued in Form D by the Commercial taxes Department, Government of Tamilnadu, it is revealed that Universal Creation Proprietorship is maintained by Geetha. Since the drawer of the disputed cheque is not maintaining the account in the drawyee bank, i.e., Pallavan Grama Bank, she is not liable for discharge of debts and hence the offence under section 138 of Negotiable Instruments Act is not attracted, thus the criminal proceedings initiated against the petitioner is liable to be quashed.

3. The learned counsel for the respondent/complainant submitted that the cheque has been given by the petitioner. When the respondent presented it for collection, the same was returned on the ground 'insufficient funds'. Since the petitioner after receiving the amount had issued the disputed cheque as though the cheque is maintained in her account, the respondent bonafidely believing the same, presented it for collection, but it was returned as 'insufficient funds'. Under the circumstances, the offence is made out. Hence he seeks to dismiss the Criminal Original Petition.

4. On perusal of records, the fact reveals that the petitioner is A2. The respondent is the complainant in STC.No.3865 of 2021 on the file of

Judicial Magistrate Court No.IV, Salem. The respondent/complainant filed a complaint against the petitioner for the offence under section 138 of Negotiable Instruments Act for dishonour of cheque. According to the respondent, the petitioner had borrowed a sum of Rs.20,00,000/- from the petitioner to meet out her most urgent expenses and in order to discharge the legal debt, she issued a cheque for a sum of Rs.20 lakhs drawn on Pallavan Grama Bank, Gugai Branch, Salem on 31.08.2020. When the respondent presented the same, it was returned with an endorsement 'Funds Insufficient' . After issuing legal notice, since the amount remained unpaid, he filed a complaint.

5. Further, on perusal of the records, the fact reveals that the disputed cheque is maintained at Pallava Grama Bank in account No. ' 10021875827 ' operated by Geetha. The first page of the Pallavan Grama Bank Pass Book pertaining to the cheque account has been filed by the petitioner. It reveals that the cheque is pertaining to the account No.' 10021875827 ' and this account is maintained by Geetha. Under the circumstances, it is clear that the disputed cheque account is not maintained by the petitioner.

Section 138 of the Negotiable Instrument Act runs as follows;

" 138 Dishonour of cheque for insufficiency, etc., of funds in the account. —Where any cheque drawn by a person on an account maintained by him with a banker for 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, 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 by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for 19 [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of

information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice."

6. In view of the above said provisions, whether any cheque drawn by a person on an account maintained by him with a Banker for payment of money through his account to another person is mandated requirement to constitute the offence under section 138 of Negotiable Instruments Act. In this case, it is absent. The account pertaining to disputed cheque is not maintained by the petitioner. For the reasons stated above, this court is of the view that no offence is made out against the petitioner under section 138 of Negotiable Instruments Act. Hence the criminal proceedings in STC.No.3865 of 2021 is liable to be quashed. Accordingly, the criminal proceedings initiated in STC.No.3865 of 2021 on the file of Judicial magistrate Court No.IV, Salem is quashed and the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is

closed.

14.07.2023

msr
Index:yes/no
Internet:yes/no

To
The Judicial Magistrate Court No.IV, Salem

V. SIVAGNANAM, J.

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