IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.11.2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.25149 of 2023
and
Crl.M.P.Nos.17436 & 17437 of 2023

Bhuvaneswari ... Petitioner

Vs.

M/s.Mahindra & Mahindra Financial Services Ltd.,
Rep.by its Power Holder S.Kamalraj
S/o.V.Subbaryan,
Gateway Building,
Apollo Bundar,
Mumbai-400 001. ... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleased to call for the records relating to the S.T.C.No.1572 of 2023, on the file of the learned Judicial Magistrate Court No.III, Salem and quash the same in so far as against the petitioner/2nd accused.

For Petitioner : Mr.K.Vijay Anand

ORDER

The petitioner herein who is the co-guarantor of the loan for the purchase of lorry by her husband, is under prosecution for an offence under Section 138 of Negotiable Instruments Act in S.T.C.No.1572 of 2023, on the file of the Judicial Magistrate Court No.III, Salem.

2. The petitioner seeks to quash the complaint on the ground that she is not a signatory of the cheque and therefore, she cannot be prosecuted for the offence under Section 138 of N.I.Act, which could be sustainable only against the drawer of the cheque and any person who had the knowledge of issuance of the cheque for discharge of the debt and being in responsibility of day today affairs of the business.

3. Relying upon the judgment of the Hon'ble Supreme Court which has dealt with the scope and ambit of Section 141 of N.A.Act vis-a-vis Section 138 of N.I.Act, the Learned Counsel appearing for the petitioner submitted that the petitioner cannot be prosecuted since she is not the signatory of the cheque.

4. No doubt, the reading of Sections 138 and 141 of N.I.Act indicate that the criminal prosecution can be launched against the drawer of the cheque and if it is a company or association then a person as explained in Section 141 of N.I.Act. The other person can be prosecuted only if the specific allegation is made that they are in charge of business responsibility of the day today business and had knowledge of issuance of the cheque. Unless, the twin condition is satisfied, non signatory of the cheque cannot be prosecuted. As far as this case is concerned, it applies the above said parameter laid down by the catena of judgment. This Court finds that this petitioner is the wife of the signatory of the cheque and joint account holder in which the cheque has been issued, besides that she has took guarantee for repayment of the loan advanced for the purchase of the vehicle.

5. According to the complainant, the cheque was issued to discharge the loan due and this petitioner having agreed to pay the instalments as per the deed of guarantee and issued the cheque duly signed by the 1st accused to discharge the debt, but without arranging sufficient fund in their account is liable for prosecution.

6. This Court earlier finds that when the statutory notice dated 05.01.2023 issued to the petitioner by way of registered post, same was received by them on 06.01.2023. She has given reply through her counsel alleging that this cheque was forged by the complainant and therefore to

Dr.G.JAYACHANDRAN, J.

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recall the statutory notice. There is no whisper that she had no knowledge about the issuance of the cheque or there is no denial or role in the affairs of the business namely borrow of loan executing guarantee letter. In such circumstances, this Court holds that the judgments cited by the petitioner are entirely different factual matrix and will not apply to the case in hand. Hence this Criminal Original Petition is dismissed. Consequently, the connected Criminal Miscellaneous Petitions are also dismissed.

08.11.2023

Index : Yes/No
Neutral Citation : Yes/No
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To

The Judicial Magistrate Court No.III, Salem.

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