**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**RESERVED ON : 19.09.2023**

**PRONOUNCED ON : 27.09.2023**

**CORAM:**

**THE HONOURABLE MR. JUSTICE P.DHANABAL**

**Crl.O.P.(MD).No.3622 of 2020**

**and Crl.M.P(MD).Nos.1950 & 1951 of 2020**

Fr.Maria Arputham ... Petitioner

Vs.

1.T.Mahesh
2.Fr.Joseph Sundaram ... Respondents

**PRAYER**: Criminal Original Petition has been filed under Section 482 of Cr.P.C, praying to quash the proceedings under STC.No.1278 of 2015 on the file of the Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District, where the petitioner has been cited as second accused for alleged offences under Section 138 of the Negotiable Instrument Act, 1881 on the following among other grounds.

For Petitioner : M/s.S.Xavier Rajini

For Respondents : Mr.V.M.Bala Mohan Thampi for R1

**ORDER**

This Criminal Original Petition has been filed by the petitioner to quash the proceedings under STC.No.1278 of 2015 on the file of the learned Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District and pass orders.

**2.** According to the petitioner, the first respondent herein has filed a complaint in STC.No.1278 of 2015 on the file of the learned Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District, wherein this petitioner has been arrayed as second accused for the alleged offence under Section 138 of the Negotiable Instrument Act.

**3.** According to the petitioner, the above said complaint is not maintainable since the Malankara Catholic College, Marigiri, Kaliakkavilai, Kanyakumari District, is administered by the Malankara Syrian Catholic Diocese, Marthandam, Kanyakumari District, but the said diocese has not been arrayed as a party in this proceedings. The petitioner was functioning as the bursar of the College and he was authorized to issue cheques only for day to day administration of the College viz., salary to teachers, purchasing of construction materials, payment to contractors etc. The diocese is administering the college and the diocese is spending money for the development of the college and the diocese has not authorised any body including the petitioner to borrow even a single rupee from anyone.

**4**. There is no valid reason indicated in the complaint for the petitioner to borrow a sum of Rs.8,60,000/- on 25.10.2012 towards loan from the first respondent. When the petitioner was travelling to Chennai in the month of May 2012, he missed some of the signed blank cheques bearing account No.10270100162269 of Federal Bank, Parasalai Branch and immediately, the petitioner intimated to the bank and closed his account on 22.05.2012.

**5.** There is no occasion for the petitioner to issue two cheques dated 06.03.2013 for the reason that there is no legally enforceable debt to the first respondent and the College would not issue post dated cheques. On coming to know that the petitioner missed cheques that too after closing of accounts on 22.05.2012, the first respondent created a story that the petitioner borrowed a sum of Rs.8,60,000/- on 25.10.2012 towards loan, and issued two cheques on the same day. Therefore, the case in STC.No.1278 of 2015 is liable to be quashed.

**6.** No counter was filed by the respondents.

**7.** The learned counsel appearing for the petitioner would contend that the first respondent has filed a complaint before the learned Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District, under Section 138 of the Negotiable Instrument Act, and the same has been taken cognizance in STC.No.1278 of 2015 and the petitioner has been arrayed as second accused in the above said case. The petition is not maintainable since the diocese of the said College has not been arrayed as a party to the proceedings. This petitioner has no role to play with the financial matter and he is only a signatory authority for the day to day expenses of the College. Therefore, without adding the diocese as a party in the proceedings, and filing a case as against the petitioner, is clearly an abuse of process of law.

Already the petitioner lodged a complaint that the cheque leaves were misplaced while he was travelling to Chennai in the month of May 2012 and then the account was closed on 22.05.2012. Now after 10 months, the cheque leaves were presented and the case has been filed with false allegations. There is no legal debt and the cheques were not issued for any legally enforceable debt. Therefore, pending cheque case in STC.No.1278 of 2015 on the file of the learned Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District, is liable to be quashed.

**8.** In support of his contention, the learned counsel appearing for the petitioner has relied on the judgments in ***1) R.Vivekanandan Vs. Vijaylakshmi*** reported in ***2015 (2) MWN (Cr.) DCC 94 (Mad.), 2) Ceasefire Industries Ltd., Vs. State & others,*** reported in ***2017 (2) MWN (Cr.) DCC 71 (Del.) and 3) S.Saravanan Vs. S.Murugesan*** reported in ***2020 (1) MWN (Cr.) DCC 22 (Mad.).***

**9.** The learned counsel for the first respondent would contend that the petitioner is the authorised signatory to issue cheque in favour of the College and the Correspondent of the College has been arrayed as first respondent in the cheque case. In fact, the petitioner and the second respondent had approached the first respondent for development of the College and administered fund and thereby the first respondent paid a sum of Rs.8,60,000/- on 25.10.2012. Thereafter, the petitioner gave two cheque leaves, one is for the amount of Rs.4,60,000/- and another one is for the amount of Rs.4,00,000/- of Federal Bank, Parasalai Branch, on 06.03.2013. When the cheques were presented for collection, they were returned as payment dishonour. Thereafter, the first respondent issued a notice through his lawyer demanding him to pay back the cheque amount. The said notice was received by the petitioner and the first accused and they sent a reply on 23.05.2013 with false averments.

**10.** In the reply notice, they have not taken any ground with regard to the liability of diocese. Therefore, the first respondent filed a cheque case before the Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District. After perusing the records, the learned Magistrate has taken cognizance of the case, since prima facie case is available as against the petitioner and the first accused. Therefore, the grounds raised by the petitioner, cannot be considered now and the defence to be taken before the trial Court. Thereby the matter requires elaborate trial. Therefore, at this stage the petition is liable to be dismissed.

**11.** In support of this contention, the learned counsel appearing for the first respondent has relied on the judgment in ***P.N.Salim Vs. P.J.Thomas and another, reported 2004 CRI.L.J.3096, Kerala High Court.***

**12.** This Court heard both sides and perused the records.

**13.** On a perusal of the records, it is seen that the first respondent has filed a cheque complaint as against the second respondent and the petitioner in STC.No.1278 of 2015. In the said cheque case, this petitioner has been arrayed as second accused and the Correspondent of the College is added as first accused. According to the first respondent, this petitioner is the authorised signatory for the Malankara Catholic College, Mariagiri, Kanyakumari District and the petitioner was dealing with the financial matter of the said college. The first accused/second respondent is the correspondence of the above said college. The petitioner and the second respondent borrowed a sum of Rs.8,60,000/- for development of the College and thereby the petitioner and the second respondent issued two cheques, one is for Rs.4,60,000/- and another one is for Rs.4,00,000/- drawn by the Federal Bank, Parasalai Branch. When the same were presented for collection, the cheques were returned and then a notice was issued. The said notice was served to the petitioner and the second respondent. Despite receipt of the notice, they have neither re-paid nor suit reply notice. Hence, he filed the said case.

**14.** According to the petitioner, the said cheques were not issued for discharge of any legally enforceable debt. In the month of May 2012, when he was travelling to Chennai, he had misplaced some of the signed blank cheques of Federal Bank, Parasali Branch. The same was intimated to the Bank and closed the account on 22.05.2012. The complaint has also been lodged for the above missing cheques. Further, the said College is maintained by the diocese and the financial dealing is within the control of diocese, but the said diocese has not been added as a party in the proceedings and thereby the complaint as against the petitioner is not maintainable.

**15.** The petitioner admitted the signature found in the cheques and his defence is that the cheques were misplaced and to that effect he has given a complaint before the concerned Bank and the account was also closed in the year 2012 itself. These all are the defence taken and agitated before the trial Court. The above said grounds taken by the petitioner requires elaborate trial and this Court at this stage cannot adjudicate the disputed facts.

**16.** The learned counsel appearing for the petitioner, in support of his contention relied on the following judgments:

(i) ***R.Vivekanandan Vs. Vijaylakshmi reported in 2015 (2) MWN (Cr.) DCC 94 (Mad.),*** wherein this Court in para No.8 held as follows:

> *"8. This Court in Abraham Memorial Educational Trust and others v. C.Suresh Babu [2012 (2) MWN (Cr.) (DCC) 161 (Mad.)] held that a Trust would answer to the name of the 'Company' as defined in proviso to Section 141 of the Negotiable Instruments Act. While so, offences*

*of dishonour of cheque would be that committed by the juridical person, the Trust. The decision in Aneeta Hada v. Godfather Travels & Tours (P) Ltd., ((2012) 5 SCC 661) informs that impleading the company as one of the accused is a mandatory requirement and prosecution of the Director or authorised signatory of cheque without arraying the company as an accused would not be maintainable."*

On a careful reading of the above said judgment it is clear that without including the Company and filing a cheque complaint would not be maintainable.

(ii) ***Ceasefire Industries Ltd., Vs. State & others, reported in 2017 (2) MWN (Cr.) DCC 71 (Del.),*** wherein this Court in para No.7 held as follows:

*"7. The bank which returned the cheques unpaid had made it clear that the accounts had been blocked. It is clear that the complainant itself was aware that the accounts had been frozen in terms of directions by some statutory authority. In these circumstances, the reasons for return of the cheques unpaid being not what is envisaged in Section*

*138 of the N.I. Act, these petitions are devoid of merit and, therefore, dismissed.”*

On careful reading of the above said judgment, it is clear that the judgment will not be applicable to the present case, since the complainant itself was aware that the accounts had been frozen in terms of directions by some statutory authority. In this case, the account was closed thereby the above case will not be applicable to the present case.

(iii) ***S.Saravanan Vs. S.Murugesan reported in 2020 (1) MWN (Cr.) DCC 22 (Mad.)*** wherein this Court in para Nos.11 & 12 held as follows:

*“11.Section 138 of the N.I. Act is a penal provision, the commission of which offence entails a conviction and sentence on proof of the guilt in a duly conducted criminal proceedings. The penal provision, needless to say, must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold. In this case, Section 138 of the N.I. Act creates a penal liability and as a natural corollary, the same should also receive a strict interpretation. The culpability attached to dishonour of the cheque can in no*

*case "except in the case of Section 141 of the N.I. Act" be extended to those on whose behalf the cheque has been issued. No person could be held liable if the cheque was not issued from the bank account of the issuer. In this case, admittedly, the account is not maintained by the authorised signatory. Further the principle of agency is a concept of civil liability which cannot be extended to fix penal liability when the penal provision does not allow the Court to do so. In the case of proprietary concern prosecution can be initiated against the individual or the proprietor.*

*12.No stretch of imagination can a non drawer be held liable for a cheque on the sole ground that the cheque was issued for and on his behalf. In this case, the authorised signatory alone could not be prosecuted and the authorised signatory does not maintain the account with the bank and it is only the proprietor who maintains the account. In this case proprietrix of M/s.Sri.Pavatharani Exports, S.Kavitha is not an accused. Hence, the petitioner cannot be prosecuted."*

On a careful reading of the above said judgment, it is clear that it will not be applicable to the present case, as no person could be held liable if the cheque was not issued from the bank account of the issuer. If the account is not maintainable by the authorised signatory, the case against him under

Section 138 of the Negotiable Instrument Act would not attract.

**17.** In the case on hand, the said ground has been taken as one of the grounds in the cheque complaint. The case of the first respondent is that the petitioner and the second respondent borrowed the amount for development of College, whereas the case of the petitioner is that the cheques were not issued for any legally enforceable debt and the cheques were already misplaced. Therefore, this disputed facts have to be tried elaborately and the case will not be applicable to the present case.

**18.** The learned counsel for the first respondent has relied on the judgment in ***P.N.Salim Vs. P.J.Thomas and another, reported 2004 CRI.L.J.3096, Kerala High Court.,*** wherein this Court in para Nos.11 & 12 held as follows:

> " *11. There is yet another way of looking at the problem. A person like the accused in this case who closes the account with his bank but retains unused cheque leaves with him without surrendering the same to the bank must certainly be held to continue to maintain the account, at least for the purpose of Section 138 of the N.I. Act, notwithstanding the fact that he had instructed his bank to*

*close the account. It is the duty of every bank and every customer to insist and ensure that all unused cheque leaves are returned to the bank before the account maintained by him is closed. Only when that happens can it be held that he has ceased to maintain the account with the bank. Until the last unused cheque leaf is returned or the non-return explained to the bank, it must be held that such account holder continues to maintain the account with the bank. This must be so, at least the purpose of Section 138 of the N.I. Act. I get support for this reasoning from the observations made by Mr.Justice T.K. Chandrashekhara Das of the Bombay High Court in para 9 of the decision reported in Shivcndra v. M/s. Adineo, 1996 Cri LJ 1816.*

*12. Thus, going by the observations in NEPC Micon Ltd., (1999 Cri LJ 2883) (cited supra) as well as the later decision of the Supreme Court in Goaplast (P) Ltd. v. Chico Ursula D'Souza ((2003) 3 SCC 232 : (2003 Cri LJ 1723) going by the language and in Section 138 of the N.I. Act and drawing inspiration from observations of the Bombay High Court in the decision referred above, I have no hesitation to agree that a cheque issued by the accused on an account which he had maintained with the bank will continue to fall within the sweep of Section 138 of the N.I.*

*Act notwithstanding the fact that he had closed the account before the date of the cheque/issue of the cheque."*

On careful reading of the above said judgment, it is clear that the cheque was issued by the accused on the account which he had maintained with the bank, and that will continue to fall within the sweep of Section 138 of the Negotiable Instrument Act, notwithstanding the fact, that he had closed the account before the date of issue of the cheque.

**19.** In the case on hand also, one of the stand taken by the petitioner is that he already closed the account but the above said fact is to be decided only after elaborate trial. The grounds taken by the petitioner are nothing but a defence and the petitioner can agitate the same before the trial Court and it is for the trial Court to decide the case on merits.

**20.** In view of the above said discussion and considering the facts and circumstances of the case, this Court is declined to quash the proceedings at this stage and the petition has no merits and it deserves to be

**P.DHANABAL., J.**

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dismissed. Accordingly, this petition is dismissed. Consequently, connected miscellaneous petitions are closed.

**27.09.2023**

Index : Yes / No
Internet : Yes / No
Neutral Citation Case : Yes/No
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**To**

The Judicial Magistrate No.I, Kuzhithurai,
Kanyakumari District.

**Crl.O.P.(MD).No.3622 of 2020**

**and Crl.M.P(MD).No.1950 &**

**1951 of 2020**

**27.09.2023**