



Crl.O.P.(MD)No.11680 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.09.2023

CORAM

THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.O.P.(MD)No.11680 of 2020
and
Crl.M.P.(MD)No.5332 of 2020

1.S.Josephine Evert

2.S.Prabu Kanth

3.M.Krishnaraj

4.M.Sankar Raj

5.T.Ramar

... Petitioners

Vs.

M.S.Senthil Arumugam

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records of the proceedings in C.C.No.71 of 2019 on the file of the Judicial Magistrate Court (Fast Track Court), Thoothukudi, quash the same as against the petitioners.

For Petitioners : Mr.R.J.Karthick



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For Respondent : No Appearance.

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ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.71 of 2019 on the file of the Judicial Magistrate Court (Fast Track Court), Thoothukudi as against the petitioners.

2.According to the petitioners, the respondent has filed cheque complaint before the learned Judicial Magistrate, Thoothukudi as against the petitioners and A1. As per the complaint, these petitioners along with A1 obtained loan from the respondent and thereafter, issued cheque for the said loan amount of Rs.40 Lakhs and A1 issued cheque and executed pro-notes. These petitioners herein are partners of the firm. When the cheque was presented for collection, it was returned unpaid with an endorsement “insufficient funds”. Therefore, the respondent issued notice to all the accused. These petitioners also issued reply stating that the partnership firm was dissolved and the petitioners have not signed in the cheque and A1 only signed the cheque. Therefore,



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offence under Section 138 of the Negotiable Instruments Act would not attract as against the petitioners herein. Therefore, the pending proceedings in C.C.No.71 of 2019 is liable to be quashed as against the petitioners herein.

3.No counter was filed by the respondent. None appeared on behalf of the respondent, inspite of so many chances given to him.

4.The learned counsel appearing for the petitioners would contend that these petitioners herein are not signatories of the cheque and A1 alone signed in the cheque. These petitioners herein are partners and there is no averment in the complaint as to how the petitioners are responsible. Mere because of the petitioners are partners of the firm, their name were included in the complaint. Since A1 along signed in the cheque, the petitioners are no way responsible. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court in a case of Aparna A.Shah Vs. M/s.Sheth Developers Pvt.Ltd. & Anr reported in 2013 8 SCC 71.



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5.This Court heard both sides and perused the materials available in the record.

6.The main contention of the petitioners is that they are not signatories of the cheque and A1 alone issued cheque. Though the petitioners are partners of the firm, there is no averments as to how this petitioners are responsible for the above said cheque. That apart, already the partnership firm was dissolved and the cheque was misused by A1. Even according to the complaint, since the petitioners are signatories of the cheque, they cannot be prosecute for the offence under Section 138 NI Act.

7.The learned counsel for the petitioners relied upon the judgment of the Hon'ble Supreme Court in a case of Aparna A.Shah Vs. M/s.Sheth Developers Pvt.Ltd. & Anr reported in 2013 8 SCC 71, wherein, the Hon'ble Supreme Court held as follows:-

21)In the light of the principles as discussed in the earlier paras, we fully endorse the view expressed by the learned Judges of the Madras, Delhi and Punjab & Haryana High Courts.



22) *In the light of the above discussion, we hold that under Section 138 of the Act, it is only the drawer of the cheque who can be prosecuted. In the case on hand, admittedly, the appellant is not a drawer of the cheque and she has not signed the same. A copy of the cheque was brought to our notice, though it contains name of the appellant and her husband, the fact remains that her husband alone put his signature. In addition to the same, a bare reading of the complaint as also the affidavit of examination-in- chief of the complainant and a bare look at the cheque would show that the appellant has not signed the cheque.*

23) *We also hold that under Section 138 of the N.I. Act, in case of issuance of cheque from joint accounts, a joint account holder cannot be prosecuted unless the cheque has been signed by each and every person who is a joint account holder. The said principle is an exception to Section 141 of the N.I. Act which would have no application in the case on hand. The proceedings filed under Section 138 cannot be used as an arm twisting tactics to recover the amount allegedly due from the appellant. It cannot be said that the complainant has no remedy against the appellant but certainly not under Section 138. The culpability attached to dishonour of a cheque can, in no case “except in case of*



Section 141 of the N.I. Act” be extended to those on whose behalf the cheque is issued. This Court reiterates that it is only the drawer of the cheque who can be made an accused in any proceeding under Section 138 of the Act. Even the High Court has specifically recorded the stand of the appellant that she was not the signatory of the cheque but rejected the contention that the amount was not due and payable by her solely on the ground that the trial is in progress. It is to be noted that only after issuance of process, a person can approach the High Court seeking quashing of the same on various grounds available to him. Accordingly, the High Court was clearly wrong in holding that the prayer of the appellant cannot even be considered. Further, the High Court itself has directed the Magistrate to carry out the process of admission/denial of documents. In such circumstances, it cannot be concluded that the trial is in advanced stage.

On careful reading of the above said judgment, it is clear that the offence under Section 138 of the N.I. Act, in case of issuance of cheque from joint accounts, a joint account holder cannot be prosecuted unless the cheque has been signed by each and every person who is a joint account holder. As per Section 138 of the Act, it is only the drawer of the cheque who can be prosecuted.



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8In the case on hand also, the petitioners herein are not signatories of the cheque. Further, there is no specific averment in the complaint in what manner the petitioners were connected to the business of the company and it is only stated that the petitioners are being partners also responsible. In view of the above said judgment and considering the facts and circumstances of the case, it is appropriate to allow this petition. Accordingly, this criminal original petition is allowed and proceedings in C.C.No.71 of 2019 pending on the file of the Judicial Magistrate Court (Fast Track Court), Thoothukudi is hereby quashed as against these petitioners. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

The Judicial Magistrate Court (Fast Track Court),
Thoothukudi.



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P. DHANABAL,J.

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