



Crl.O.P.(MD) No.14070 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.11.2023

CORAM:

THE HONOURABLE **MR. JUSTICE K.K.RAMAKRISHNAN**

Crl.O.P.(MD) No.14070 of 2019

and

Crl.M.P(MD)No.8572 of 2019

1. Paramasivan Natraj Perumal

2. RSKP Sumathi

... Petitioners

Vs.

K.Essakidurai

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records and quash the entire proceedings in STC No.847 of 2019 on the file of Judicial Magistrate, Thenkasi.

For Petitioners : Mr.R.Niresh Kumar

For Respondent : Mr.R.J.Karthick

ORDER

The petitioner herein has filed this petition to quash the entire proceedings in S.T.C.No.847 of 2019, on the file of the Judicial Magistrate, Tenkasi.



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2. The petitioners are said to have committed the offence under Section 138 of the Negotiable Instruments Act for the alleged dishonor of cheque issued by the second accused in S.T.C.No.847 of 2019 on the file of the learned Judicial Magistrate, Tenkasi.

3. The petitioners are arrayed as accused Nos1 and 3 in S.T.C.No. 847 of 2019 on the file of the learned Judicial Magistrate, Tenkasi. In the said case, the second petitioner's husband is arrayed as A2. The respondent and the second accused are friends. The second accused is an advocate. He borrowed a sum of Rs.11,50,000/- from the respondent. To discharge the same, he gave the cheque bearing No. 627240009 drawn on the HDFC Bank in the account No.50100217383073. The said cheque was dishonored with a remark “fund insufficient”. The said account was a joint account. Therefore, the respondent initiated the proceedings as against the petitioners also. The petitioners filed this quash petition on the ground that they are not signatories in the cheque and there was no joint liability. They also relied the judgment of the Hon'ble Supreme Court in the case of *Aparna A. Shah vs. Sheth Developers Private Limited and another* reported in *(2013) 8 SCC 71* and also the order



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passed in ***Crl.O.P.Nos.25193 of 2021*** etc., batch, dated 22.8.2022.

4. The learned counsel for the petitioners submitted that the first accused already died and he reiterated the above principle laid down by the Hon'ble Supreme Court and seeks to quash the proceedings.

5. The learned counsel for the defacto complainant submitted that even though the law laid down by the Hon'ble Supreme Court is in force, there is evidence to show that they have the knowledge about the issuance of cheque. The learned counsel for the respondent submitted that when they jointly borrowed a sum of Rs.11,50,000/-, the judgment cited by the learned counsel for the petitioner is not applicable to the present case and hence, he seeks for dismissal of the quash petition.

6. This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record and also the precedents relied upon by them.



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7. Even in the case of joint liability, in the case of individual persons, a person other than a person who has drawn the cheque on an account maintained by him, cannot be prosecuted for the offence under Section 138 of the NI Act. A person might have been jointly liable to pay the debt, but such a person who might have been liable to pay the debt jointly, cannot be prosecuted unless the bank account is a joint account and he should be a signatory to the cheque^[1]. 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 petitioners are not drawers of the cheque and they have not signed the same^[2]. In view of the above principles laid down by the Hon'ble Supreme Court, the prosecution against the second petitioner amounts to abuse of process of law. Even though the said petitioner is a joint account holder, she has not signed the said cheque. Therefore, this Court is inclined to quash the proceedings against the second petitioner.

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1 (2021) 4 SCC 675

2 (2013) 8 SCC 71



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8. Accordingly, the Criminal Original Petition as against the second petitioner stands allowed and the learned Judicial Magistrate, Tenkasi, is hereby directed to dispose of the case in S.T.C.No.847 of 2019 within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
sbm

To

The Judicial Magistrate,
Thenkasi.



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K.K.RAMAKRISHNAN, J.

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