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CrI.O.P.No.3224 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.3224 of 2024

And

CrI.M.P.Nos.2368 and 2369 of 2024

1.S.Madhan

2.S.Agalya

... Petitioners

Vs.

R.P.Chandramohan

... Respondent

Prayer:

Petition filed under Section 482 of Cr.P.C., seeking to call for the records in S.T.C.No.493 of 2023 on the file of the learned Judicial Magistrate No.II, Karaikal and quash all proceeding against the petitioner.

For Petitioners : M/s.S.P.Vijayaragavan

For Respondent : M/s.Jerry V.V.Sundar

O R D E R

The criminal original petition has been filed seeking to quash the proceedings in S.T.C.No.493 of 2023 on the file of the learned Judicial Magistrate No.II, Karaikal.



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2.Heard the learned counsel for the petitioners as well as the learned counsel for the respondent.

3.The respondent has filed a complaint as against three accused persons for the offence under Section 138 of the Negotiable Instruments Act. The signatory of the cheque was A1 and the petitioners herein have been arrayed as A2 and A3 and they happened to be the son and daughter of A1.

4.The petitioners have knocked the doors of this Court mainly on the ground that they cannot be made to undergo the trial before the Court below since they are not the signatories to the cheque and the present case also does not fall within the ambit of Section 141 of the Negotiable Instruments Act and therefore, they cannot be considered to be the drawers of the cheque which is a prerequisite to maintain a complaint under Section 138 of the Negotiable Instruments Act.

5.The learned counsel for the respondent/ complainant submitted that the petitioners were holding a joint account and all the three accused persons issued a reply notice dated 29.07.2020. Therefore, the petitioners are now trying to wriggle out of the liability



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by filing this quash petition.

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6.In the considered view of this Court, the petitioners cannot be made to undergo the trial in the present case. Admittedly, the petitioners are not the signatories to the cheque. It is only A1 who had signed the cheque. The petitioners are the son and daughter of A1. Even assuming that the petitioners (A2 and A3) are joint account holders, the criminal liability cannot be fastened against them. Useful reference can be made to the judgment of the Apex Court in ***Aparna A.Shah Vs. Sheth Developers Private Limited and another*** reported in ***(2013) 8 SCC 71***.

7.The prerequisite for maintaining a complaint under Section 138 of the Negotiable Instruments Act is that it can only be instituted against the drawer of the cheque. In the instant case A1 is the drawer of the cheque. Therefore, the petitioners who happen to be the children of A1 cannot undergo the trial in this case and the continuation of the proceedings as against them will result in abuse of process of law which requires the interference of this Court.

8.In the result, the proceedings in S.T.C.No.493 of 2023 on the



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file of the learned Judicial Magistrate No.II, Karaikal, is quashed in so far as the petitioners are concerned. It is made abundantly clear that the above findings rendered by this Court confines itself only to the criminal liability of the petitioners for the offence under Section 138 of the Negotiable Instruments Act and that will not come in the way of the respondent to proceed against the petitioners under civil law, if so advised. The Court below is directed to proceed further with the complaint in S.T.C.No.493 of 2023 and complete the proceedings within a period of four months from the date of receipt of a copy of this order.

9.Accordingly, this criminal original petition stands allowed. Consequently, the connected miscellaneous petitions are closed.

26.03.2024

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

- 1.The Judicial Magistrate No.II, Karaikal
- 2.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

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N.ANAND VENKATESH,J.
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