IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.OP.No.2707 of 2023
and
Crl.MP.Nos.1568 and 1569 of 2023

Shirley Salome .. Petitioner

Vs.

S.Durga .. Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records in S.T.C.No.184 of 2022 pending on the file of the Hon'ble Fast Track Court No.1, Allikulam, Egmore, Chennai and quash the complaint and all further proceedings pending before the Court.

For Petitioner : Mr.R.Rajarathnan
Senior Counsel
for Mr.S.Ashok Kumar

ORDER

This Criminal Original Petition is filed to quash the complaint under Section 138 of Negotiable Instruments Act on the sole ground that the petitioner is not the signatory of the cheque and the cheque drawn by the second accused from the account maintained by the second accused.

2. The complaint against the petitioner and her husband is that for their business, they have borrowed a sum of Rs.22,00,000/- and the security for the debt, they have jointly deposited the title deed and executed a memorandum to that effect. That apart, for discharging the debt, the subject cheque dated 20.01.2020 for a sum of Rs.16,64,000/- was issued by the second accused who is the husband of the petitioner herein. On the premise that the cheque was issued to discharge the liability of the petitioner and her husband jointly and severally and the cheque being bounced for insufficient of funds. Both the husband and wife are liable for prosecution under Section 138 of Negotiable Instruments Act.

3. However, the learned Senior Counsel appearing for the petitioner submits the vicarious liability under Negotiable Instruments Act envisaged under Section 141 of Negotiable Instruments Act cannot be invoked in case of cheque issued by individual. In support of his argument, the learned Counsel rely upon the judgement of Hon'ble Supreme Court in ***Alka Khandu Avhad /Vs/ Amar Shyam Prasad Mishra*** reported in 2021 4 SCC 675. In identical fact, the Hon'ble Supreme Court has held that to attract offence under Section 138 of

Negotiable Instrument Act, only the drawer of the cheque can be held liable and Section 138 of Negotiable Instrument Act does not speak about joint liability. Section 141 of Negotiable Instruments Act has no application when the cheque is issued by individual and not behalf of Company or Association of Person.

4. This after considering the complaint and the law laid down by the Hon'ble Supreme Court holds that the prosecution under Section 138 of Negotiable Instrument Act against the petitioner who is not the signatory of the cheque is unsustainable. The Hon'ble Supreme Court in ***Alka Khandu Avhad*** case cited above, in unambiguous term held as under :

> *" 10. Therefore, a person who is the signatory to the cheque and the cheque is drawn by that person on an account maintained by him and the cheque has been issued for the discharge, in whole or in part, of any debt or other liability and the said cheque has been returned by the bank unpaid, such person can be said to have committed an offence. Section 138 of the NI Act does not speak about the joint liability. Even in case of a joint liability, in 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 NI Act. A person might have been jointly liable to pay the debt, but if such a person who might have been liable to pay the debt jointly, cannot be prosecuted unless the bank account is jointly maintained and that he was a signatory to the cheque.

11. Now, so far as the case on behalf of the original complainant that the appellant herein-original Accused 2 can be convicted with the aid of Section 141 of the NI Act is concerned, the aforesaid has no substance

12. Section 141 of the NI Act is relating to the offence by companies and it cannot be made applicable to the individuals. The learned counsel appearing on behalf of the original complainant has submitted that " company" means any body corporate and includes a firm or other association of individuals and therefore in case of a joint liability of two or more persons it will fall within *a “ other association of individuals” and therefore with the aid of Section 141 of the NIA, the appellant who is jointly liable to pay the debt, can be prosecuted. The aforesaid cannot be accepted. Two private individuals cannot be said to be “ other association of individuals”. Therefore, this is no question of invoking Section 141 of the NI Act against the appellant, as the liability is the individual liability (may be a joint liabilities), but cannot be said to be*

b. be the offence committed by a company or by it corporate or firm or other associations of individuals. The appellant herein is neither a Director nor a partner in any firm who has issued the cheque. Therefore, even the appellant cannot be convicted with the aid of Section 141 of the NI Act. Therefore, the High Court has committed a grave error in not quashing the complaint against the appellant for the offence under Section 138 read with

c Section 141 of the NI Act. The criminal complaint filed against the appellant for the offence punishable under Section 138 read with Section 141 of the AI Act, therefore, can be said to be abuse of process of law and therefore the same is required to be quashed and set aside.

Following the dictum laid by the Hon'ble Supreme Court, this Criminal Original Petition is allowed. S.T.C.No.184 of 2022 as against this petitioner/A1 stands quashed. Consequently, the connected miscellaneous petitions are closed.

15.10.2024

Vv

To

1. The Fast Track Court No.1, Allikulam, Egmore, Chennai

2. The Public Prosecutor,
   High Court of Madras.

Dr.G.JAYACHANDRAN,J.

Vv

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