IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.19125 of 2023
And
Crl.M.P.Nos.12814 and 12813 of 2023

Ms.N.Sivabakkiyam ... Petitioner

Vs.

M/s.State Bank of India
(Commercial Branch)
having its office at
No.68, Cherry Road,
Hasthampatty,
Salem – 636 007.
Rep. by its Deputy Manager,
Mr.S.Pradeep Kumar ... Respondent

Prayer:

Petition filed under Section 482 of Cr.P.C., seeking to call for the records and to quash the impugned complaint in S.T.C.No.1511 of 2023 pending trial on the file of the learned Judicial Magistrate No.III, Salem for the alleged offence under Section 138 of Negotiable Instruments Act, 1881 in so far as the petitioner.

For Petitioner : Mr.V.Karthic
Senior Counsel
for M/s.N.Damodaran

For Respondent : Mr.Nithyaesh Nataraj

O R D E R

The criminal original petition has been filed by A1 to quash the proceedings pending in S.T.C.No.1511 of 2023, on the file of the learned Judicial Magistrate No.III, Salem.

2.The respondent has filed complaint for offence under Section 138 of the Negotiable Instruments Act against the petitioner and her son. According to the respondent Bank, the petitioner and her son had availed some credit facilities. Towards partial repayment of the existing liability, the cheque was issued from the joint account maintained by the petitioner and her son. When this cheque was presented, it was dishonoured with an endorsement 'funds insufficient'. After exchange of notices between the parties, the complaint came to be filed before the Court below.

3.Heard the learned Senior Counsel for the petitioner and the learned counsel for the respondent.

4.The main issue that was raised by the learned Senior Counsel appearing on behalf of the petitioner is that the cheque was admittedly signed only by A2 and she is the drawer of the cheque and therefore the petitioner cannot be made as an accused in this Case. The learned Senior Counsel further submitted that even if it is taken to be a joint account, each and every account holder cannot be prosecuted for offence under Section 138 of the Negotiable Instruments Act and only the signatory of the cheque can be prosecuted. To substantiate his submission the learned Senior Counsel relied upon the decision of the Apex Court in a case in *Aparna A.Shah Vs. sheth Developers Private Limited and another* reported in *(2013) 8 SCC 71*.

5.Per contra, the learned counsel for the respondent submitted that when the reply notice was given by the petitioner for the statutory notice that was issued before the complaint was initiated, the petitioner has taken a stand that the very signature that is found in the cheque is neither that of the petitioner nor of her son. However, in the present quash petition, the petitioner (A1) is taking a stand that the signature found in the cheque is that of A2 and therefore, she cannot be prosecuted. The learned counsel further submitted that the petitioner is the joint account holder and the loan was given to both the petitioner and her son. Therefore, the liability is traceable even to the petitioner and the petitioner has to necessarily establish her defence only before the Court below. The learned counsel also brought to the notice of this Court the order in Crl.O.P.No.17357 of 2018 dated 24.01.2022 inorder to buttress his arguments.

6.A careful reading of the complaint shows that both the petitioner and her son had availed loan facilities from the respondent Bank. In partial repayment of this loan, the cheque was issued in favour of the respondent Bank. On carefully going through the cheque it is seen that the cheque was issued only by A2. If for the sake of arguments, it is taken that the petitioner and her son were joint account holders, every account holder cannot be prosecuted and only the drawer of the cheque/ signatory of the cheque can be prosecuted for offence under Section 138 of the Negotiable Instruments Act. The law and the issue is too well settled.

7.Even as per the averments made in the complaint, it is specifically stated that A2 has issued cheque in favour of the respondent Bank. Therefore, the petitioner cannot be made to face the prosecution just because of the type of defence that was taken in the reply notice. If the petitioner is not the drawer of the cheque, she cannot be prosecuted under Section 138 of the Negotiable Instruments

Act. The continuation of the proceedings against the petitioner (A1) will clearly amount to abuse of process of Court which requires the interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

8.In the result, the proceedings in S.T.C.No.1511 of 2023 on the file of the learned Judicial Magistrate No.III, Salem, is quashed in so far as the petitioner is concerned. There shall be a direction to the Court below to proceed further with the case in S.T.C.No.1511 of 2023 and complete the proceedings, within a period of three months from the date of receipt of copy of this order.

9.This criminal original petition is allowed with the above directions. Consequently, the connected miscellaneous petitions are closed.

06.02.2024

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

N.ANAND VENKATESH,J.
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To

1.The Judicial Magistrate No.III,
Salem.

2.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

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And
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