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CrI.O.P.No.24981 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2024

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.O.P.No.24981 of 2024

and

CrI.M.P.No.14017 of 2024

S.Raja Rajeswari

... Petitioner

Vs.

M.K.Ganesh

... Respondent

Prayer: Criminal Original Petition is filed under Section 528 BNSS, pleaded to call for the records in C.C.No.5690 of 2014 on the file of the Fast Track Court-III (Magistrate Level), Saidapet, Chennai and quash the same.

For Petitioner : Mr.R.Venkata Varathan

ORDER

The petitioner herein is the accused in the proceedings under Section 138 of Negotiable Instruments Act.

2. This Criminal Original Petition is filed to quash the proceedings on the ground that the petitioner and her husband has filed Insolvency Petition in I.P.No.51 of 2014 and by an order of adjudication they were declared



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insolvent on 25.07.2014. The cheque which is the subject matter of the complaint is dated 30.07.2014 i.e., much after adjudicating her as insolvent and therefore, the criminal proceedings against the petitioner after adjudicating her as insolvent is not sustainable. That apart, certain other factual issue such as the cheque was issued as security but misused by the complainant and there is no enforceable liability are raised by the petitioner herein in support of the quash petition.

3. This Court finds that except the legal issue whether the criminal prosecution under Section 138 of Negotiable Instruments Act is sustainable against the adjudicated insolvency, all other issues raised in the petition are factual in nature and it has to be adjudicated only before the trial Court. The issue regarding sustainability of criminal prosecution under Section 138 of N.I.Act against adjudicated insolvency is no more *res integra* in view of judgment rendered by this Court and the Hon'ble Supreme Court in the following judgments i). ***Bharath N.Mehtha and another Vs. Mansi Finance (Chennai) Ltd., B.Venkatesan -vs- T.Saravana*** and ii) ***Ajaykumar Radheyshyam -vs- Tourism Finance Corporation of India Ltd.***



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4. The Hon'ble Supreme Court in the judgments cited above, had discussed the issue in detail and had protected only the corporate debtors namely, the company and not the Directors. The individual liability of the Directors of the company which faced bankruptcy proceedings are not immune from prosecution and not protected under Section 32A(1) of IBC Code.

5. As regarding the individual debtors, the Hon'ble Supreme Court has clarified that the insolvency proceedings against the individuals will not protect them from proceedings under Section 138 N.I.Act. Even prior to the enactment of IBC. This Court through Justice M.Karpagavinayagam (as he was then) in ***Bharath N.Mehtha and another*** case had considered the consequence of issuing cheques after adjudication as insolvent and had explained the expressions that suit or other legal proceedings found in Section 72 of the Presidency Town Insolvency Act as below:-

“The wordings “any suit or other legal proceedings” would mean the suit or other legal proceedings relating to the property of the insolvent and not with reference to the personal act committed by the accused constituting the offence liable to be proceeded in Criminal Court.”



6. In the above said judgment the proceedings under Section 138 of

N.I.Act and the suit or other legal proceedings been compared and the Court has held as below:-

“17. The offence under Section 138 of the Negotiable Instruments Act is a statutory offence and these proceedings are totally different from that of the insolvency proceedings and by any stretch of imagination, it cannot be said that section 17(2) prohibits the continuation of criminal proceedings initiated for dishonour of the cheque under Section 138 of the Negotiable Instruments Act.”

7. Thus, finally the Court has held that there is no bar in any of the provisions of insolvency Act or in the Negotiable Instruments Act, restricting the complainant to resort Section 138 of N.I.Act, after adjudication proceedings under Insolvency Act and it is open to the petitioner/accused to establish the fact regarding the alleged enforceable liability and the factum of impossibility to pay in the light of the insolvency before the trial Court.

8. In view of the declaration of the law as stated above, this Court is not inclined to record any opinion on the facts and leave it open for the petitioner/accused to canvas those points before the trial Court.



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With this observation, this Criminal Original Petition is disposed of. Consequently, the connected Criminal Miscellaneous Petition is closed.

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Index : Yes/No

Neutral Citation : Yes/No

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To,

The Fast Track Court-III (Magistrate Level), Saidapet, Chennai.



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Dr.G.JAYACHANDRAN,J.

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