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Crl.OP.No.8150 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.OP.No.8150 of 2024
and
Crl.M.P.No.5930 & 5932 of 2024

1.M.K.R.Mareeswaran

2.M.Kohial

... Petitioners

Vs.

S.Loganathan

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, praying to call for the records relating to the private complaint in STC.No.1614 of 2023 on the file of Metropolitan Magistrate, Fast Track Court IV, George Town, Chennai and quash the same as illegal.

For Petitioner : Mr.V.Sudhan
for M/s.Ajmal Associates
For Respondent : Ms.N.Nithilavalli

ORDER



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The petitioners herein are accused Nos.1 and 2 in a private complaint for offence under Section 138 of the Negotiable Instruments Act pending on the file of the Metropolitan Magistrate, Fast Track Court IV, George Town, Chennai in STC.No.1614 of 2023.

2. The petitioners seek quash of the complaint on the short point that the blank cheque signed by the 1st petitioner alone from the joint account maintained by the petitioners 1 and 2 was given as security for a chit transaction. The said cheque has been misused by the complainant by forging the signature of the 2nd respondent and presenting it for collection. The said cheque was returned with an endorsement drawer signature differs.

3. When the petitioners came to know about the presentation of the cheque with forged signature and on receiving a statutory notice, given a suitable reply stating that the 2nd petitioner had no knowledge about the cheque and the same has been presented forging her signature. Therefore, the learned counsel submits that when there is no legally enforceable debt payable by the petitioners, a complaint under Section 138 of the Negotiable Instruments Act is not maintainable.



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4. The learned counsel appearing for the respondent/ complainant would submit that it is incorrect to say that the 2nd petitioner had no knowledge about the transaction and issuance of cheque. In fact, the complainant has transferred money both to the account of the 1st and 2nd petitioners and the liability is well known to the 2nd petitioner. The drawers signature differs cannot be a ground to quash the criminal complaint initiated under Section 138 of the Negotiable Instruments Act.

5. This Court after giving its anxious consideration on the above submissions of the learned counsel on either side is of the opinion that the return of cheque with an endorsement drawers signature differs in normal circumstances may not be a ground for quash, however when the accused in the reply to the statutory notice had made clear that it is not her signature and the signature had been forged tallies with the bankers memo, then the case under Section 138 of the Negotiable Instruments Act cannot sustain.

6. There must be *prima facie* material for discharge of enforceable debt. When the signature found in the cheque is held to be not that of the



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drawer / account holder, then the complaint under Section 138 of the Negotiable Instruments Act cannot sustain. To illustrate, if the blank cheque without signature is illegally taken from the account holder and the signature is forged, but, not identical and presented for collection, naturally the Bank will return it as signature differs. Based on that there cannot be a criminal complaint under Section 138 of the Negotiable Instruments Act.

7. Therefore, this Court holds that the complaint has to be quashed. Accordingly, the private complaint filed in STC No.1614 of 2023 pending on the file of the Metropolitan Magistrate, Fast Track Court IV, George Town, Chennai, is quashed.

8. In the result, this Criminal Original Petition stands **allowed**. Consequently, the connected miscellaneous petitions are closed.

05.08.2024

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To

The Metropolitan Magistrate,



Fast Track Court IV,
George Town, Chennai

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Dr.G.JAYACHANDRAN,J.

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