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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

**CRL.OP No.27760 of 2023
and Crl.MP.No.19235 of 2023**

1.S.Kalavathy

2.T.Kavitha

3.S.Aruna

. Petitioners 1-3/ Accused 2-4

.Vs.

J.Prema, Proprietrix
M/s.Sairam Enterprises
West Mada Street
Maduravoyal
Chennai 600 095.

..Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to case in C.C.No.5110 of 2020, on the file of the Fast Track Court II, Metropolitan Magistrate Egmore, Chennai and quash the same so far as the petitioners 1 to 3/Accused A.2-4 are concerned.

For Petitioners : Mr.S.Shunmuga Velayutham
R.T.Vijayaraaghavan

For Respondent : Ms.Ja.Prethika



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ORDER

This petition has been filed challenging the proceedings pending in C.C.No.5110 of 2020, on the file of the Fast Track Court II, Metropolitan Magistrate Egmore, Chennai.

2.The respondent filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 against four accused persons. The petitioners were arrayed as A2 to A4.

3.The specific case of the respondent/complainant is that he was a tenant in the property and that he had vacated the property and towards the refund of the security deposit, a cheque was issued by A1 for a sum of Rs.5,00,000/-. This cheque was deposited and it was dishonored. Thereafter, statutory notice was issued and since the cheque amount was not repaid back, the complaint came to be filed before the Court below.

4.The above complaint has been challenged by A2 to A4 on the ground that they are not the drawer of the cheque and the continuation of the proceedings against them will result in an abuse of process of Court.

5.Heard Mr.Mr.S.Shunmuga Velayutham, learned counsel for the petitioner and Ms.Ja.Prethika, learned counsel for the respondent.



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6.It is clear from the materials available on record that the cheque was issued by A1 in his individual capacity. The petitioners happened to be the wife and daughters of A1. They have been added as accused on the ground that they were also actively involved while issuing the cheque in favour of the respondent/complainant.

7.In the considered view of this Court, under Section 138 of the Negotiable Instruments Act, 1881, only the drawer of the cheque can be prosecuted. The same is clear from the plain language used under Section 138 of the Negotiable Instruments Act, 1881. Useful reference can also be made to the judgment of the Apex Court in **Aparna A. Shah v. Sheth Developers (P) Ltd., and Another** reported in **2013 8 SCC 71**.

8.The cheque was issued by A1 in his individual capacity and therefore the proceedings can continue only as against A1. The petitioners (A2 to A4) cannot be prosecuted since admittedly they are not the drawer of the cheque. Therefore, the continuation of the criminal proceedings against the petitioners will result in an abuse of process of Court which requires the interference of this Court.

9.In the light of the above discussion, the proceedings in C.C.No.5110 of 2020, on the file of the Fast Track Court II, Metropolitan



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N.ANAND VENKATESH.J.,

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Magistrate Egmore, Chennai, is hereby quashed insofar as the petitioners/A2 to A4, are concerned.

10.In the result, this criminal original petition is allowed and there shall be a direction to the Court below to proceed further against A1 and the proceedings shall be completed within a period of **four months** from the date of receipt of copy of the order. Consequently, connected miscellaneous petition is closed.

30.01.2024

Speaking Order/Non-Speaking Order

Index: Yes/No

Internet: Yes/No

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To

1.Fast Track Court II
Metropolitan Magistrate Egmore
Chennai.

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