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Crl.O.P.(MD) No.5253 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2024

CORAM

THE HON'BLE MRS.JUSTICE R.HEMALATHA

Crl.O.P.(MD) No.5253 of 2021

and

Crl.M.P.(MD) No.3038 of 2021

Rajaperumal

... Petitioner

Vs.

R.Subburaj

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973, to call for the records pertaining to C.C.No.97 of 2021 on the file of the Judicial Magistrate Court No.II, Sivakasi and quash the same against the petitioner (A2) as illegal and violation of law.

For Petitioner : Mr.M.Jothi Basu

For Respondent : No appearance

ORDER

Seeking to quash the private complaint filed by the respondent under Section 200 of Cr.P.C. before the Judicial Magistrate Court No.II, Sivakasi, in C.C.No.97 of 2021, against the petitioner (A2) and her



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husband (A1), for an offence punishable under Section 138 of Negotiable Instruments Act, 1881, the present Criminal Original Petition is filed.

2. The case of the respondent/complainant is that the first accused borrowed a sum of Rs.3,00,000/- from him on 28.12.2020 promising to repay the same within three months and also handed over a cheque bearing No.000093 for the said amount of Rs.3,00,000/- drawn on Lakshmi Vilas Bank, Sivakasi, to the respondent/complainant. When the respondent/complainant presented the cheque for collection through his bankers namely, Indian Bank, Sivakasi Branch, on 29.01.2021, the same was returned on 30.01.2021 for the reason 'insufficient funds'. Thereafter, the respondent/complainant issued a statutory notice dated 09.02.2021 calling upon the petitioner and A1 to repay the amount due under the cheque within 15 days from the date of receipt of the said notice. According to the respondent/complainant, though the accused received the said notice, they neither came forward to make good the payment nor sent any reply notice. Therefore, the respondent/complainant filed the private complaint under Section 200 Cr.P.C. before the Judicial Magistrate Court No.II, Sivakasi against the present petitioner (A2) and A1.



4. Though notice was served on the respondent/complainant and his was printed in the cause list, there is no representation for him.

5. It is pertinent to extract Section 138 of Negotiable Instruments Act, 1881 hereunder:



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"Dishonour of cheque for insufficiency, etc., of funds in the account.

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;



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(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice."

As per Section 7 of NI Act, the maker of a bill of exchange or cheque is called the 'drawer'.

6. In the instant case, the drawer of the cheque is A1 and the present petitioner (A2) cannot be held liable for a penal provision under Section 138 of Negotiable Instruments Act, 1881. In the circumstances, the criminal proceedings in C.C.No.97 of 2021 on the file of the Judicial Magistrate Court No.II, Sivakasi is quashed as far as the present petitioner (A2) alone is concerned.



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WEB COPY 7. Accordingly, this Criminal Original Petition is allowed.

Consequently, connected Miscellaneous Petition is closed.

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Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
JEN

Copy To:

The Judicial Magistrate No.II,
Sivakasi,
Virudhunagar District.



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R.HEMALATHA, J.

JEN

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