BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

Crl.O.P.(MD)No.14886 of 2021 &
Crl.M.P.(MD)No.7919 of 2021

Sylvia Jeya ... Petitioner

vs.

R.Sivakumar ... Respondent

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in S.T.C.No.2 of 2021 on the file of the Special Court for exclusive trial of Negotiable Instruments Act cases, Tirunelveli and quash the same in respect of the petitioner.

For Petitioner : Mr.S.Palani Velayutham

For Respondent : Mr.V.R.Shanmuganathan

ORDER

Seeking to quash the final report in S.T.C.No.2 of 2021 on the file of the Special Court for exclusive trial of Negotiable Instruments Act cases, Tirunelveli, the present Criminal Original Petition is filed by the second accused.

2. The case of the respondent / complainant is that the accused 1 and 2 are husband and wife and they are holding a joint account in Canara Bank, Mumbai Matunga East Branch. The first accused is a close friend of the respondent / complainant and he borrowed a sum of Rs.13,00,000/- on 01.09.2019 as a hand loan and also issued a post dated cheque bearing No.185137 dated 23.11.2019 drawn on Canara Bank, Mumbai Matunga East Branch. When the cheque was presented for collection by the complainant through his banker Indian Overseas Bank, Palayamkottai branch on 27.11.2019, the same was returned for the reason 'payment stopped by drawer'. Thereafter, the complainant issued a statutory notice on 11.12.2019 to the accused 1 and 2 calling upon them to pay the amount due under the Cheque. The notice to the first accused was returned with a postal endorsement 'unclaimed'. The second accused received the notice on 16.12.2019. Therefore, the respondent filed a private complaint under Section 200 Cr.P.C. before the Special Court for exclusive trial of Negotiable Instruments Act Cases, Tirunelveli against the accused 1 and 2 for the offences punishable under Sections 138 and 142 of the Negotiable

Instruments Act [hereinafter referred as 'the NI Act' in short]. The present petitioner is the second accused.

3. Mr.S.Palani Velayutham, learned counsel appearing for the petitioner would contend that though the present petitioner is holding a joint account with her husband in Canara Bank, Mumbai Matunga East Branch, she did not borrow any amount from the respondent and that she has been roped in unnecessarily in the criminal proceedings in S.T.C.No.2 of 2021 on the file of the Special Court for exclusive trial of Negotiable Instruments Act cases, Tirunelveli.

4. Per contra, Mr.V.R.Shanmuganathan, learned counsel appearing for the respondent (claimant) would contend that since both the husband and wife are holding a joint account and the cheque issued by the petitioner's husband got dishonoured, both the accused are jointly and severally liable to pay the amount to the respondent.

5. It is pertinent to extract Section 138 of the NI Act hereunder.

"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;

(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 the first accused and the second accused cannot be held liable for a penal provision under Section 138 of the NI Act. In the circumstances, the criminal proceedings in S.T.C.No.2 of 2021 on the file of the Special

Court for exclusive trial of Negotiable Instruments Act cases, Tirunelveli stands quashed insofar as the present petitioner is concerned. Accordingly, the Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

04.03.2024

NCC: Yes/No
Index : Yes/No
Speaking/Non-Speaking order

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To

1.The Special Court for Exclusive Trial
of Negotiable Instruments Act cases, Tirunelveli

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

R.HEMALATHA, J.

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Crl.O.P.(MD)No.14886 of 2021

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