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CrI.O.P.No. 2897 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CrI.O.P.No.2897 of 2024 and
CrI.M.P.Nos.2100 and 2102 of 2024

Priyadharshini

... Petitioner

Vs.

Swaroop Krishna

..Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records relating to the case in C.C.No.663 of 2019 on the file of the learned Fast Track Judicial Magistrate No.II, Coimbatore and quash the same as against the petitioner.

For Petitioner : Mr.S.Viswanathan

For Respondent : No appearance



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ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C. No. 663 of 2019 on the file of the learned Fast Track Judicial Magistrate No. II, Coimbatore.

2. Heard the learned counsel for the petitioner. Though notice has been served on the respondent, no one appeared on behalf of the respondent either through video conferencing or in person.

3. The petitioner is arrayed as Accused No. 1 (A1) in the complaint lodged by the respondent for the offence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as “the Act”). The respondent has alleged that both accused approached him and borrowed a loan to the tune of Rs.14,50,000/- on various dates. Towards the partial repayment of the said loan, the second accused issued cheques. The said cheques were presented for collection but were returned dishonoured with the endorsement “Funds Insufficient.” After



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issuing a legal notice, the respondent lodged the complaint under Section 138 of the Act.

4. The sole ground raised by the learned counsel for the petitioner is that the petitioner is arrayed as A1 and she has not issued any of the cheques. Even according to the respondent, the second accused alone issued the cheques. It is not the case of the respondent that both the accused maintained a joint account. Admittedly, the account stands in the name of the second accused, who alone issued the cheques to the respondent. Though there is an averment in the complaint alleging that both petitioners approached the respondent for the loan, it is undisputed that the second accused alone issued the cheques to repay the loan amount.

5. Before proceeding further, it is relevant to extract the provision under Section 138 of the Act, which reads as follows:

"Where any person draws a cheque on an account maintained by him with a bank for the discharge of any debt



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or other liability, and the cheque is returned unpaid due to insufficient funds or if it exceeds the amount arranged to be paid, the drawer of the cheque shall be deemed to have committed an offence under Section 138 of the Act."

Thus, it is clear that in order to attract the offence under Section 138 of the Act, the person must be the drawer of the dishonoured cheque and must have had a liability to discharge. In the present case, the main ingredients of the offence under Section 138 of the Act are not satisfied as against the petitioner. Admittedly, the petitioner did not draw any cheque in favour of the respondent. Therefore, there is absolutely no cause of action to punish the petitioner under Section 138 of the Act.

6. In view of the above, the proceedings in C.C. No. 663 of 2019 on the file of the learned Fast Track Judicial Magistrate No. II, Coimbatore, is hereby quashed as against the petitioner alone. However, the Trial Court is directed to proceed as against the second accused in accordance with law.



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7. Accordingly, this Criminal Original Petition stands allowed.

Consequently, connected miscellaneous petitions are closed.

01.04.2025

Neutral citation : Yes/No
Speaking/non-speaking order
shk

To

1.The Fast Track Judicial Magistrate No.II, Coimbatore



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G.K.ILANTHIRAIYAN, J.

shk

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