



CrI.O.P.No.3374 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2026

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CORAM:

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

CrI.O.P.No.3374 of 2023 and
CrI.MP.No.2077 of 2023

G.Revathi

... Petitioner

Vs.

1.B.Anil Kumar Jain
2.P.Suresh

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Cr.P.C. to call for the records in STC.No.3203 of 2022 on the file of the Judicial Magistrate No.III, Puducherry and quash the same.

For Petitioner : Mr.K.Selvaraj

For Respondents

For R1 : No appearance

ORDER

This criminal original petition has been filed to quash the proceedings in STC.No.3203 of 2022 on the file of the Judicial Magistrate No.III, Puducherry.

2. The petitioner is the second accused in the complaint lodged



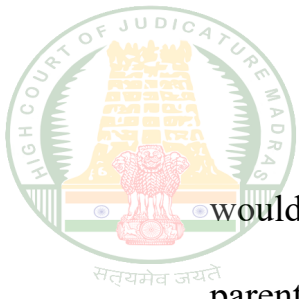
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by the first respondent for the offence punishable under Section 138 of NI

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Act on the allegation that the petitioner and the second respondent had jointly borrowed a sum of Rs.18,00,000/- on 28.04.2019 for development of business and also for their family expenses. Both the accused assured the first respondent that the amount would be returned within three months for which they jointly handed over cheques dated 31.07.2019. On instruction, the cheques were presented for collection on 31.07.2019. However, all the cheques were returned dishonoured for the reason 'funds insufficient'.

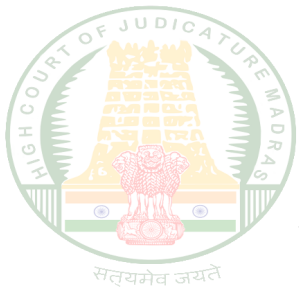
3. The learned counsel appearing for the petitioner would submit that the petitioner is arrayed as the second accused. Though cheques were issued from the joint account, the petitioner did not sign the cheques. The cheques were issued without the knowledge of the petitioner herein in favour of the first respondent. In fact, the petitioner and the second respondent got separated long back and utilising the said circumstances, the second accused signed the cheques and issued in favour of the first respondent from the joint account of the petitioner and the second respondent herein. After coming out from the matrimonial home, the petitioner also issued public notice in 'Dinamalar', a Tamil daily dated 27.04.2019 that any transaction of the second respondent



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would not bind the petitioner and would not bind the property of her parents and she would not be held liable for any transaction of the second respondent herein. Further, on receipt of the statutory notice, the petitioner had sent a detailed reply notice dated 22.08.2019. Even without considering the same, the first respondent initiated proceedings under Section 138 of NI Act. In support of his contention, the learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Aparna A.Shah Vs. Sheth Developers Private Limited*** reported in **(2013) 8 SCC 71**, in which it is held as follows:

25) *In Smt. Bandeep Kaur vs. S. Avneet Singh, (2008) 2 PLR 796, in a similar situation, learned Single Judge of the Punjab and Haryana High Court held that in case the drawer of a cheque fails to make the payment on receipt of a notice, then the provisions of Section 138 of the Act could be attracted against him only. Learned Single Judge further held that though the cheque was drawn to a joint bank account which is to be operated by anyone, i.e., the petitioner or by her husband, but the controversial document is the cheque, the liability regarding dishonouring of which can be fastened on the drawer of it. After saying so, learned Single Judge accepted the plea of the petitioner and quashed the proceedings insofar as it relates to her and permitted the complainant to proceed*



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further insofar as against others.

26) In the light of the principles as discussed in the earlier paras, we fully endorse the view expressed by the learned Judges of the Madras, Delhi and Punjab & Haryana High Courts.

27) In the light of the above discussion, we hold that under [Section 138](#) of the Act, it is only the drawer of the cheque who can be prosecuted. In the case on hand, admittedly, the appellant is not a drawer of the cheque and she has not signed the same. A copy of the cheque was brought to our notice, though it contains name of the appellant and her husband, the fact remains that her husband alone put his signature. In addition to the same, a bare reading of the complaint as also the affidavit of examination-in- chief of the complainant and a bare look at the cheque would show that the appellant has not signed the cheque.

28) We also hold that under [Section 138](#) of the N.I. Act, in case of issuance of cheque from joint accounts, a joint account holder cannot be prosecuted unless the cheque has been signed by each and every person who is a joint account holder. The said principle is an exception to [Section 141](#) of the N.I. Act which would have no application in the case on hand. The proceedings filed under [Section 138](#) cannot be used as an arm twisting tactics to recover the amount allegedly due from the appellant. It cannot be said that the complainant has no



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remedy against the appellant but certainly not under [Section 138](#). The culpability attached to dishonour of a cheque can, in no case “except in case of [Section 141](#) of the N.I. Act” be extended to those on whose behalf the cheque is issued. This Court reiterates that it is only the drawer of the cheque who can be made an accused in any proceeding under [Section 138](#) of the Act. Even the High Court has specifically recorded the stand of the appellant that she was not the signatory of the cheque but rejected the contention that the amount was not due and payable by her solely on the ground that the trial is in progress. It is to be noted that only after issuance of process, a person can approach the High Court seeking quashing of the same on various grounds available to him. Accordingly, the High Court was clearly wrong in holding that the prayer of the appellant cannot even be considered. Further, the High Court itself has directed the Magistrate to carry out the process of admission/denial of documents. In such circumstances, it cannot be concluded that the trial is in advanced stage.

4. Heard the learned counsel appearing for the petitioner and perused all the materials placed before this Court. Though notice was served on the first respondent and name was printed in the cause list, no one appeared before this Court either by party or through pleader.



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5. The only point arising in this case is that whether the

petitioner is held liable for the offence punishable under Section 138 of NI Act when she was not a signatory of the cheque though she is a joint account holder. The petitioner and the second respondent are husband and wife. They jointly borrowed loan from the first respondent. Thereafter, they got separated due to misunderstanding and they are living separately. While being so, the second respondent alone signed cheque and issued in favour of the first respondent in order to repay the loan amount. The said joint account is permitted to be operated by anyone i.e. the petitioner or the second respondent herein. As per Section 138 of NI Act, in case issuance of cheque from joint accounts, a joint account holder cannot be prosecuted unless the cheque has been signed by each and every person who is a joint account holder. In the case on hand, admittedly the second respondent herein alone signed the cheque and issued in favour of the first respondent. Further, two private individuals cannot be said to be other association of individuals. Therefore, there is no question of invoking provisions under Section 141 of NI Act as the liability is an individual liability and cannot be said to be an offence committed by a company or by it corporate or firm or other associations of individuals. Therefore, the person cannot be convicted with the aid of Section 141 of NI Act.

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6. In view of the above discussion, the impugned proceedings cannot be sustained against the petitioner and it is liable to be quashed. Accordingly, the entire proceedings in STC.No.3203 of 2022 on the file of the Judicial Magistrate No.III, Puducherry is quashed in respect of the petitioner alone. The trial court is directed to proceed with the trial in respect of the second respondent in accordance with law.

7. With the above direction, this criminal original petition stands allowed. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

Judicial Magistrate No.III, Puducherry

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