



Crl.O.P.No.3159 of 2023

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N.ANAND VENKATESH, J.,

The issue that is involved in the present case was captured in the earlier order passed by this Court on 09.01.2024 and the same is extracted hereunder:-

“The only issue that is involved in the present petition is that the petitioner, who was the authorised signatory has been added as an accused. 2. According to the petitioner, only the sole proprietor of the concern must be made as an accused and the authorised signatory cannot be made as an accused. To substantiate the same, the judgment of the Apex Court in Raghu Lakshminarayanan v. Fine Tubes [(2007) 5 SCC 103] is relied upon. 3. The issue that is involved in the present case is squarely covered by the earlier judgment of this Court in P.Saravanakumar v. S.P.Vijaya Kumar [(2022) 2 MWN DCC 19] wherein this Court had held that both the sole proprietor as well as the authorised signatory can be added as an accused. When this judgment was brought to the notice of learned counsel, he sought



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for some time. Post this case under the caption 'for orders' on 23.01.2024.'"

2. When the matter was taken up for hearing today, the learned counsel for the petitioner brought to the notice of this Court, the judgment in ***N.Gopalan Vs. K.Udhayakumar*** reported in ***(2009) 4 CTC 217***. In this judgment, it is seen that the wife was the proprietorix of the proprietary concern and she had authorised her husband to sign the cheques and therefore, the husband was the authorised signatory. The cheque was dishonoured and both the husband and wife were added as A1 and A2 in C.C.No.2978 of 2013. The learned single Judge came to a conclusion that the prosecution under Section 138 of the Negotiable Instruments Act (hereinafter referred to 'the NI Act') can be made only against the drawer of the cheque who was maintaining an account and admittedly, the account was maintained in the name of the proprietorix. Therefore, this Court found that the authorised signatory cannot be made as an accused and quashed the complaint in so far as the husband is concerned. While passing this judgment, this Court relied upon the judgment of the Apex Court in ***Raghu Lakshminarayanan Vs. Fine Tubes*** reported in ***(2007) 5 SCC 103***.



WEB COPY3. In a subsequent judgment that was passed in the case of ***P.Saravana Kumar Vs. S.P.Vijaya Kumar*** reported in ***2022 SCC OnLine Mad 1387***, another learned single Judge has taken a contrary view and has held that the complaint is maintainable as against the proprietor as well as the authorised signatory. The learned single Judge was not in agreement with the earlier judgment passed in ***N.Gopalan's case*** referred supra. The learned single Judge was of the view that the earlier judgment was rendered on a wrong understanding of the judgment of the Apex Court in ***Raghu Lakshminarayanan's case*** referred supra.

4. In view of the above, there are two contradictory judgments on the same issue. In the instant case, there is no dispute with regard to the fact that the cheque was issued by a proprietorship concern, called as M/s Prabhat General Agencies. The proprietor of this concern was one T.L. Chudiwala. The petitioner was an authorised signatory. Both the petitioner as well as the authorised signatory have been made as an accused in this case. It is brought to the notice of this Court that the proprietor died during the pendency of the proceedings.



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WEB COPY5. On carefully reading Section 138 of the NI Act, it is seen that criminal proceedings can be launched only as against a person who draws the cheque on an account maintained by him/her. If such account is maintained by the proprietary concern, obviously the proprietor should be made as an accused. Thus, in view of the fact that the proprietary concern does not have an independent identity apart from the proprietor/proprietorix, Section 141 of the NI Act will not apply to a case of this nature. If the proprietor/ proprietorix is made as an accused on the ground that the cheque was drawn from the account maintained by the proprietary concern, there should be more clarity as to how the authorised signatory can also be made as an accused. If both of them are made as an accused, it may not strictly be in line with Section 138 of the NI Act. This Court is dealing with a provision under criminal law and it has to be necessarily given a strict interpretation.

6. In view of the above discussion, this Court is inclined to refer this issue to the Division Bench for an authoritative pronouncement on the position of law.



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WEB COPY7. The following questions can be referred to the Division Bench;

(a) Whether in a proceeding initiated under Section 138 of the NI Act, against the proprietary concern, the proprietor/ proprietorix alone can be considered as the drawer of the cheque under Section 138 of the NI Act and

(b) If the authorised signatory has signed the cheque on behalf of the proprietary concern, whether such authorised signatory can also be added as an accused along with the proprietor/ proprietorix ?

8. Registry is directed to place this order before the Hon'ble Chief Justice, in order to constitute a bench to decide the above questions.

23.01.2024

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