

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.04.2015
DELIVERED ON : 29.04.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.O.P.No.2176 of 2015
and M.P.Nos.1 and 2 of 2015

S.Gayathri .. Petitioner

vs.

S.P.Jayagopal .. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.7148 of 2014 pending on the file of the Hon'ble Fast Track Court-II, Egmore, and quash the same.

For Petitioner : Mr.V.Devendhiran
For Respondent : Mr.C.Emalias, APP

O R D E R

Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the State.

2.The petitioner seeks to quash the prosecution launched by the respondent in C.C.No.7148 of 2014 for an offence under Section 138 of the Negotiable Instruments Act.

3. For the sake of convenience, the parties would be referred to as the complainant and the accused.

4. The accused is before this Court challenging the prosecution under Section 482 Cr.P.C. It is the case of the complainant that Durairaj, the father of the accused had come forward to sell a property to the complainant for Rs.80 lakhs, towards which he had received a sum of Rs.23,48,000/- as advance on various dates from the complainant. The sale did not go through and therefore, a Cancellation Agreement was entered into between the said Durairaj and the complainant on 22.09.2011, in terms of which the accused undertook to discharge the liability of her father and towards that, she gave three cheques for Rs.7,16,000/- each, which when presented by the complainant was dishonoured. The complainant issued the usual statutory notice under Section 138 of the Negotiable Instruments Act and thereafter, has launched the present prosecution.

5. The learned counsel for the accused submitted that in the Cancellation Agreement dated 22.09.2011, the accused has not signed and therefore, the cheque was not given in discharge of the alleged liability. It is seen that the accused is the daughter of Durairaj and that Durairaj and the complainant had entered into an

agreement for sale of the property and subsequently, they have entered into a Cancellation Agreement on 22.09.2011. Just because the accused has not signed the cancellation agreement, it cannot be stated that the entire prosecution should be quashed. The fact remains that the accused had given a cheque, which got dishonoured and a statutory notice was issued and only thereafter, the complaint has been filed. The presumption under Section 139 operates and that could be discharged only during the course of trial. The proceedings cannot be quashed on the basis of disputed question of fact.

6. In the result, this petition is devoid of merits and the same is dismissed.

7. The learned counsel for the petitioner/accused submits that the petitioner/accused being a lady, her presence in the trial Court may be dispensed with.

8. Taking into consideration the request made by the learned counsel, this Court directs the accused to appear before the Magistrate and collect the copies of the complaint and be present for questioning and also at the time of examination of 313 Cr.P.C and date of judgment. Apart from the aforesaid purposes, if an application under Section 317 Cr.P.C. is filed on behalf of the accused, the same shall be liberally considered by the trial Court, on condition that the counsel for the accused shall cross examine the prosecution witnesses after they are examined in chief and the accused shall not dispute her identity and adopt any dilatory tactics for protracting the trial. If the trial Court finds that the accused is adopting dilatory tactics, it is open to the trial Court to insist the presence of the accused for hearing. The trial Court is directed to dispose of the trial within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते
Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gms

To

1. Fast Track Court-II, Egmore.

2.The Public Prosecutor, High Court, Madras.

Cr1.O.P.No.2176 of 2015

KJI (CO)

Eu 19.05.2015