

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.09.2015

Coram:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.23141 of 2015 and
M.P.Nos.1 and 2 of 2015

Janaki ..Petitioner

Vs.

Balaraman ...Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in STC No.47 of 2015 on the file of the learned Judicial Magistrate-II, Cuddalore and quash the same.

For Petitioner : Mr.Mohan for
Mr.M.Murali

O R D E R

Heard Mr.Mohan, learned counsel appearing for the petitioner and perused the documents available on record. For the sake of convenience the parties are referred as complainant and accused.

2.It is the case of the complainant that on 14.05.2014, the accused borrowed a sum of Rs.9,50,000/- (Rupees Nine Lakhs Fifty Thousand only) in discharge of which he gave a cheque, which was presented was returned for the reason "payment stopped by drawer". The complainant issued statutory notice dated 06.08.2014 under Section 138 of Negotiable Instruments Act, for which the accused had sent a reply dated 30.08.2014. Since the accused did not comply with the demand of repayment within 15 days, the complainant lodged the present complaint in S.T.C. No.47 of 2015 against the accused before the learned Judicial Magistrate No.II, Cuddalore for an offence under Section 138 of the Negotiable Instruments Act, challenging which the accused is before this Court.

3.Mr.Mohan, learned counsel appearing for the petitioner submitted that apart from the assertion of the complainant that the sum of Rs.9,50,000/- (Rupees nine lakhs fifty thousand only) was given on 14.05.2014, there are no other materials in support of the said plea. He also contended that the complainant is a stranger to the accused and the accused has also sent reply notice dated 30.08.2014 explaining his stand.

4.This Court gave its anxious consideration to the submission made by the learned counsel for the petitioner and it is seen that these are disputed questions of fact, which cannot be gone into in a quash proceedings under Section 482 Cr.P.C as held by the Supreme Court in S.Krishnamurthy Vs Chellammal [2015] 4 Scale 371.

5.The fact whether there was a legally enforceable debt between the complainant and the accused cannot be adjudicated in a quash application. Though the burden is on the accused under Section 139 of Negotiable Instruments Act, yet there are some preliminary burden which is cast on the complainant to prove his case and only thereafter, the reverse burden can be pressed into service. Under such circumstances, it is not a fit case to quash the proceedings under Section 482 Cr.P.C.

6.Mr.Mohan, learned counsel for the petitioner further submitted that the petitioner is in Singapore and that she will find it very difficult to appear in person before the trial court. Accepting his submission, the petitioner shall be present before the trial court for receiving the complaint, for answering on the accusation, for questioning under Section 313 Cr.P.C., and on the date of judgment. On the other dates, the presence of the accused can be dispensed with provided she gives an undertaking before the trial court that her counsel will cross-examine the prosecution witness without adopting any dilatory tactics in her absence and she also should not dispute her identity.

With the above observations, this Petition is dismissed with liberty to the petitioner to raise all the defence before the trial court. Consequently connected miscellaneous petitions are closed.

ssd

s/d-

Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

To

1. The Judicial Magistrate-II,
Cuddalore
2. do thro'the Chief Judicial Magistrate,
Cuddalore.

+ 1 cc to Mr.M.Murali, Advocate SR 50439

ev(co)
prk1/10

Cr1.O.P.No.23141 of 2015 and
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