

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

Crl.O.P. No.16076 of 2010

and

M.P.No.1 of 2010

Mrs.Nirmala

... Petitioner

vs.

M.J.Periyasamy

.. Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for the records in S.T.C.No.601 of 2009 on the file of the Judicial Magistrate Court No.III, Salem and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.R.Asokan

For Respondent : Ms.Sumithra Vasudevan

O R D E R

The petitioner is the accused in S.T.C. No.601 of 2009 on the file of the Judicial Magistrate No.III, Salem.

2. The respondent filed the above complaint under section 138 of the Negotiable Instruments Act against the petitioner stating that there was a family arrangement entered into between the parties on 13.07.2009 and towards the amount payable under the family arrangement, a cheque for Rs.4 lakhs was issued by the petitioner/accused and the same was dishonoured and after complying with the statutory provisions, the complaint was filed. This complaint is sought to be quashed in this petition.

3. It is submitted by the learned counsel for the petitioner that as per the averments made in the complaint, the cheque was issued towards the part payment payable by the petitioner in respect of the amount due under the family arrangement dated 13.07.2009. The learned counsel for the petitioner produced a copy of the family arrangement dated 13.7.2009 and argued that as per the family arrangement dated 13.7.2009, the respondent/complainant was the first party, his son P.Mani was the second party, his daughters Paapaathi and Devilatha, and Nirmala - the petitioner herein are the parties to the family arrangement. As per the said family arrangement, a sum of Rs.19 lakhs was due from the second party, namely, P.Mani, and it was also stated that a cheque for Rs.4 lakhs was received from P.Mani

by the respondent/complainant. He further submitted that as per the family arrangement, no amount was due and payable by the petitioner and the amount payable was only by P.Mani and as per the family arrangement, the cheque was received from P.Mani and the petitioner had already given a complaint about the theft of her cheque and considering all these aspects, it cannot be stated that the cheque was issued by the petitioner towards a legally enforceable liability. Therefore, the complaint is liable to be quashed.

4. I am unable to accept the contention of the learned counsel for the petitioner. It is seen from the complaint that there was family arrangement in respect of partition of family properties including business and it was reduced to writing on 13.7.2009 and the respondent and his children were parties to the agreement. It is further stated that as per the said agreement, the petitioner and her husband were liable to pay Rs.19 lakhs. It is admitted that the petitioner is the daughter-in-law of the respondent and the wife of P.Mani who was Party No.2 to the agreement. As stated supra, as per the family arrangement, P.Mani has to pay a sum of Rs.19 lakhs and the cheque was issued by the petitioner who is none other than the wife of P.Mani for a sum of Rs.4 lakhs and that was dishonoured. It is further stated that the cheque was received from P.Mani and it was not stated that P.Mani has issued the cheque. Therefore, in the absence of any particulars in the family arrangement, it cannot be presumed that the cheque was issued by P.Mani for a sum of Rs.4 lakhs. Further, having regard to the fact that the petitioner is the wife of P.Mani who was liable to pay a sum of Rs.19 lakhs and the cheque was issued by the petitioner, it cannot be presumed that the cheque was issued by P.Mani towards part payment. Hence, the contention of the petitioner that no amount was payable by the petitioner and cheque was not issued for a legally enforceable liability cannot be accepted.

5. Hence, the Petition is dismissed. The connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

asvm

To

The Judicial Magistrate Court No.III,Salem.

1 cc to Mr.R.Asokan , Advocate Sr.No.26900/15

CRL.O.P. No.16076 of 2010
and
M.P.No.1 of 2010

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