

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Cr1.O.P.No.19668 of 2015

and M.P.No.1 of 2015

Dr.K.Rayar

... Petitioner

Vs.

G.Kalaivani

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for records and quash all the proceedings in C.C.No.428 of 2009 on the file of the learned Judicial Magistrate No.I, Tambaram.

For Petitioner :Mr.A.Suresh Sathi Murugan

For Respondent :Service awaited

O R D E R

The petitioner has come forward with this petition to quash the proceedings in C.C.No.428 of 2009 on the file of the learned Judicial Magistrate No.I, Tambaram.

2.Learned counsel for the petitioner submits that the petitioner is the accused in C.C.No.428 of 2009 on the file of the learned Judicial Magistrate No.I, Tambaram. The respondent has preferred a private complaint against the petitioner under Section 138 of the Negotiable Instruments Act, stating that the respondent was a student in Jaya Surya College and she had given a sum of Rs.80,000/- towards college fee to the petitioner/accused in four installments. Thereafter, the respondent came to know that the petitioner/accused is running the institution fraudulently and hence, she had approached the petitioner to return her money, for which, the petitioner had given a cheque. When the respondent/complainant presented the cheque for encashment, the same has been returned as "Account frozen, Transaction not allowed". After issuance of statutory notice to the petitioner, the respondent has preferred a private complaint under Section 138 of Negotiable Instruments Act.

3.Learned counsel for the petitioner submits that nearly 57 cheques have stolen from the office of the petitioner for the purpose of filing complaint against him and several persons. He further submits that during Lok Adalat, a sum of Rs.5,000/- was paid to the respondent and the petitioner undertakes to pay the balance amount within a stipulated time as fixed by this Court. Therefore, he prays for allowing the petition.

4.Notice has been ordered to the respondent and awaits service. Private notice returned unserved.

5.Considering the submissions made by the learned counsel for the petitioner, whether the cheque has been issued to the respondent/complainant for discharging legally enforceable debt, is only a question of fact and that can be decided at the time of trial after letting oral and documentary evidence. Furthermore, the petitioner admitted his signature in the cheque. Under such circumstances, the ground raised by the petitioner for quashing C.C.No.428 of 2009 is only a question of fact and hence, I do not find any reason to quash the same. Therefore, the Criminal Original Petition deserves to be dismissed and it is hereby dismissed.

6.According to the petitioner, a portion of amount was paid to the respondent/complainant and he undertakes to pay the balance amount to the respondent. The above aspect has also to be decided by the trial Court. Since the case is of the year 2009, the trial Court is directed to dispose of C.C.No.428 of 2009 within a period of three months from the date of receipt of a copy of this order, in accordance with law. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

To

The Judicial Magistrate No.I,
Tambaram.

+1cc to M/S.M.Prabaharan, Advocate Sr.13131

CrI.O.P.No.19668 of 2015
and M.P.No.1 of 2015

ak (CO)
srg (10/03/2016)