

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2016

CORAM

THE HONOURABLE MS.JUSTICE R. MALA

CRL.O.P.No.2057 of 2016
and
Crl.M.P.No.1026 and 1027 of 2016

T.Prema Joy Clara Petitioner/Accused

. Vs .

S.George Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to call for the entire records concerned in S.T.C.No.932 of 2015 on the file of the learned Judicial Magistrate, Udhagamandalam, The Nilgiris District, and quash the same.

For Petitioner : Mr.C.Prakasam

ORDER

The petitioner has come forward with the present petition seeking to quash the proceedings in S.T.C.No.932 of 2015 pending on the file of the learned Judicial Magistrate, Udhagamandalam, The Nilgiris District.

2. The petitioner herein is the accused in S.T.C.No.932 of 2015, pending on the file of the learned Judicial Magistrate, Udhagamandalam, The Nilgiris District and the respondent herein is the complainant. The respondent/complainant has filed a private complaint against the petitioner/accused for an offence punishable under Section 138 of the Negotiable Instruments Act. The respondent, who is a contractor, approached the petitioner and entered into an agreement to construct the house of petitioner and as per the said agreement, the petitioner has paid a sum of Rs.25,00,000/- to the respondent/complainant, but the respondent/complainant has not finished the entire construction work. But, however, during the house warming function, the respondent/complainant has received a cheque for a sum of Rs.3,00,000/- for finishing the construction work.

The said cheque was presented for collection by the respondent/complainant and the same was returned with endorsement 'insufficient funds' and after issuance of notice, the present complaint has been preferred by the respondent/complainant. The cheque was not issued for discharging legally existing liability and hence, the petitioner has come forward with this petition for the above stated relief.

3. At the time of admission, this Court heard the arguments of the learned counsel for the petitioner in length. The respondent, as a complainant, preferred a private complaint under Section 138 of the Negotiable Instruments Act stating that to discharge the debt, the petitioner herein has given a cheque dated 01.12.2014 for a sum of Rs.3,00,000/- and the said cheque was presented for encashment on 22.12.2014 and the same was returned on 09.02.2015 by stating 'insufficient funds'. The respondent/complainant has issued a statutory notice on 13.02.2015 and he has also received the reply and thereafter, the private complaint for an offence punishable under Section 138 of the Negotiable Instruments Act was filed by the respondent/complainant. The issuance of cheque for Rs.3,00,000/- is admitted. But the point is that the cheque was not only issued for discharging existing liability but also it was issued to carry out the contract work. So, the learned counsel for the petitioner prays for quashing of the proceedings in S.T.C.No.932 of 2015.

4. It is well settled principles of law that once the issuance of cheque and signature are admitted, the respondent/complainant is entitled to invoke the presumption under Sections 118 and 139 of the Negotiable Instruments Act. Even though it is only a rebuttable presumption, that has to be rebutted by the accused with preponderance of probabilities either by examination of independent witness or cross-examination by the prosecution witness. But, the said dictum cannot be decided in the petition filed for quash. So, I am of the view that the question as to whether the cheque has been issued for discharging legally enforceable debt or to carry out the contract has to be decided only after let in oral and documentary evidence. Therefore, it is not a fit case to quash the proceedings at this stage and hence, this Criminal Original Petition is liable to be dismissed and accordingly, it is dismissed.

5. However, since the case is of the year 2015, the learned Judicial Magistrate, Udhagamandalam, The Nilgiris District, is directed to dispose of the case in S.T.C.No.932 of 2015, within a period of six months from the date of receipt of copy of this order. The learned Judicial Magistrate, Udhagamandalam, The Nilgiris District, is also directed to consider the application, if any, filed by the

petitioner for dispensing with her personal appearance, in accordance with law. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Jr1

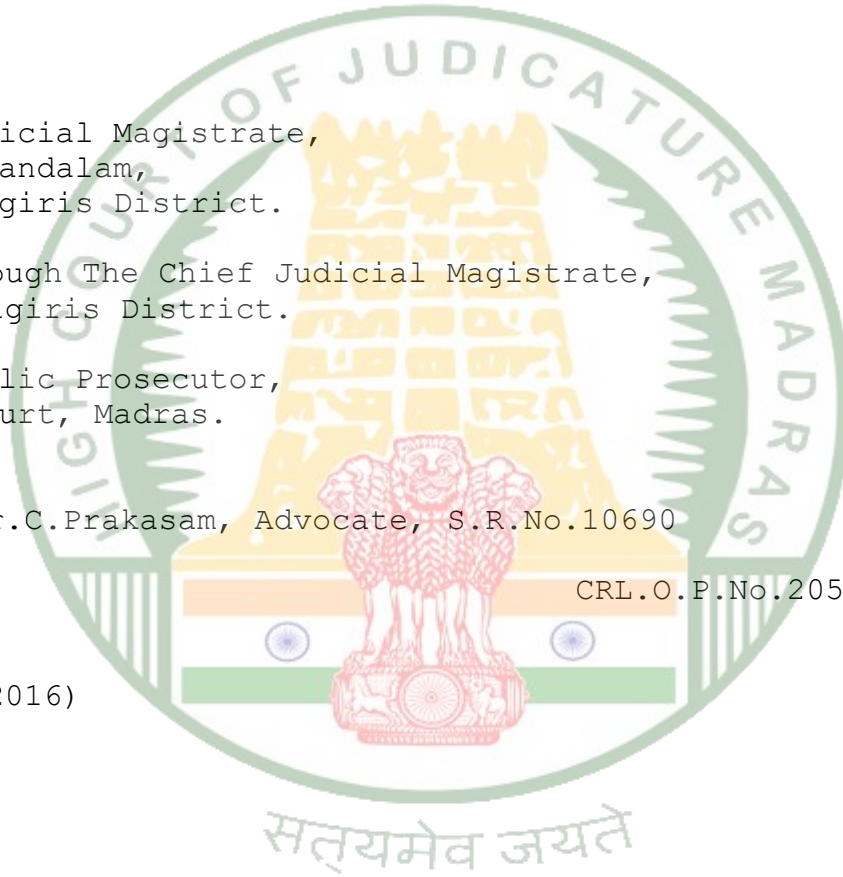
To

1. The Judicial Magistrate,
Udhagamandalam,
The Nilgiris District.
2. Do Through The Chief Judicial Magistrate,
The Nilgiris District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.Prakasam, Advocate, S.R.No.10690

CRL.O.P.No.2057 of 2016

CA(CO)
CA(10/03/2016)



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