

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2016

CORAM

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

CrI.O.P. No.23621 of 2016

and CrI.M.P.Nos.11125 and 11126 of 2016

Syliva Jaya John Kenndy @

Rayan Sylvia Jayal

Petitioner

vs.

Thomas John Paul

Respondent

Criminal Original Petition filed under Section 482, Cr.P.C. to call for the records pertaining to C.C.No.447 of 2016 on the file of the Hon'ble FTC-II, Metropolitan Magistrate, Allikulam at Chennai and quash the same as illegal forthwith.

For petitioner Mr.S.Palani Velayutham

ORDER

This petition has been filed to call for the records pertaining to C.C.No.447 of 2016 on the file of the Hon'ble FTC-II, Metropolitan Magistrate, Allikulam at Chennai and quash the same as illegal forthwith.

2. Heard the learned counsel for the petitioner.

3. For the sake of convenience, the petitioner and the respondent are referred to as accused and complainant respectively.

4. It is the case of the complainant that, the accused who is a close relative, had borrowed Rs.7 lakhs for domestic purpose and the complainant had given that amount by cheque for Rs.7 lakhs, which the accused had encashed on 06.11.2014. In discharge of the liability, the accused had given the impugned cheque on 02.07.2015, which when presented by the complainant was dishonoured. The complainant issued statutory notice u/s 138 of the Negotiable Instruments Act and thereafter, has filed the present prosecution in C.C.No.447 of 2016, challenging which the accused is before this Court.

5. The learned counsel for the accused submitted that the complainant and the accused are relatives and the impugned cheque was given only as a security. In S.Krishnamoorthy v. Chellammal [2015 (4) Scale 371], the Supreme Court has clearly stated that whether the cheque was given as security, is a question of fact, which cannot be gone into in a petition under Section 482 Cr.P.C.

6. In view of the above, there are no merits in this petition and accordingly, the same is dismissed. Consequently, connected miscellaneous petitions are closed. At that juncture, learned counsel for the accused submitted that, the petitioner is a lecturer in Mumbai and her presence before the trial Court may be dispensed with.

7. Accepting the said submission, the petitioner is directed to surrender before the trial Court within a period of two weeks from the date of receipt of a copy of this order and on such surrender, she shall be released on bail on the same day u/s 436 Cr.P.C. on she furnishing a bond for Rs.10,000/- [Rupees ten thousand only] with two local sureties for a like sum and thereafter, her presence before the trial Court shall be dispensed with on condition that she shall be present for receiving the charge sheet, for answering the charge, at the time of questioning under Section 313, Cr.P.C. and at the time of passing judgment. She shall file an affidavit of undertaking before the Trial Court that she will not dispute her identity and that the counsel named by her in the affidavit will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Supreme Court in Vinod Kumar vs. State of Punjab, [2015 (1) MLJ (CrI.) 288]. If the petitioner adopts any dilatory tactics, it is open to the Trial Court to insist upon her presence and remand her to custody as laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. If thereafter the petitioner absconds, the trial Court shall direct registration of an FIR against her u/s 229-A IPC.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

gms

To

1. Metropolitan Magistrate,
FTC-II, Allikulam at Chennai

2.The Public Prosecutor,
High Court, Madras.

1 cc to M/s.S. Palanivelayutham, Advocate, Sr. 62571

Crl.O.P. No.23621 of 2016

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