

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Cr1.O.P.No.5028 of 2016
and
Cr1.M.P.No.2635 of 2016

K.Poongodi

... Petitioner

Vs.

K.Ramesh

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for and quash records in C.C.No.1444 of 2015 pending on the file of the learned VII Metropolitan Magistrate, Chennai and now transferred to the learned IV Metropolitan Magistrate, Fast Track Court, George Town, Chennai.

For Petitioner : Mr.T.Srinivasaraghavan

O R D E R

This petition is filed to quash the proceedings in C.C.No.1444 of 2015 now pending on the file of the learned IV Metropolitan Magistrate, Fast Track Court, George Town, Chennai.

2.Learned counsel for the petitioner submits that the petitioner/accused has been facing criminal proceedings under Section 138 of Negotiable Instruments Act. He further submits that the cheque in question was not issued by the petitioner to the respondent and it was stolen from her. So the ingredients of Section 138 of the Negotiable Instruments Act, are not made out. Therefore, he prayed for quashing the proceedings in C.C.No.1444 of 2015.

3.At the time of admission, argument of the learned counsel for the petitioner is heard in length.

4.On perusal of the typed set of papers, it reveals that the respondent has preferred a private complaint against the petitioner under Section 138 of Negotiable Instruments Act stating that the petitioner has borrowed a sum of Rs.3,00,000/- from the respondent on 18.10.2014 and paid interest Rs.4,500/- per month through cheque and the same has been credited into the account of the respondent upto August

2015. Further, it reveals that the petitioner has issued a cheque dated 17.08.2015 and executed a promissory note for the purpose of repaying the entire principal amount to the respondent. When the cheque was presented for encashment, it was returned as "insufficient funds". So the respondent has issued a statutory notice to the petitioner, for which, he has also received a reply from the petitioner. Then the respondent has filed a private complaint under Section 138 of the Negotiable Instruments Act.

5.The main contention of the petitioner is that two cheque leaves and blank documents have been stolen, which were kept on the office table of the petitioner and in her reply, she has also mentioned the above aspect. Further, the cheque had contained the signature of the petitioner/accused and the respondent misused the above cheques for getting interest of Rs.4,500/-, which credited into his account periodically.

6.In view of the above, whether the cheque has been stolen or it has been given to the respondent for discharging the legally enforceable debt, has to be decided only at the time of trial after letting oral and documentary evidence. So it is only a question of fact. Therefore, I do not find any reason to quash the proceedings in C.C.No.1444 of 2015. The Criminal Original Petition deserves to be dismissed and it is hereby dismissed.

7.In the result, the Criminal Original Petition stands dismissed. The trial Court is directed to dispose of C.C.No.1444 of 2015 as expeditiously as possible. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AS)

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To

Sub Assistant Registrar

1.The Chief Metropolitan Magistrate,
Chennai.

2.The IV Metropolitan Magistrate
Fast Track Court, George Town, Chennai.

3.The VII Metropolitan Magistrate Court,
Chennai.

Cr1.O.P.No.5028 of 2016
and Cr1.M.P.No.2635 of 2016

VSN(CO)

CA(18/03/2016)

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