**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON : 26.07.2017**

**PRONOUNCED ON : 21.09.2017**

**CORAM**

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN**

**Crl.OP No.11151 of 2011 and M.P.No.1 of 2011**
**and**
**Crl.O.P.No.11152 of 2011 and M.P.No.1 of 2011**

S.Mythily .. Petitioners in both Crl.O.Ps

..Vs..

S.Balaji .. Respondents in both Crl.O.Ps

**Prayer in Crl.O.P.No.11151 of 2011:-** Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in S.T.C.No.372 of 2010 on the file of the Judicial Magistrate No.III,Coimbatore and quash the complaint and the entire proceedings there upon to secure the ends of justice.

**Prayer in Crl.O.P.No.11152 of 2011:-** Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in S.T.C.No.373 of 2010 on the file of the Judicial Magistrate No.III,Coimbatore and quash the complaint and the entire proceedings there upon to secure the ends of justice.

For Petitioner :Mr.K.Ethirajalu in both Crl.O.Ps.

For Respondent :Mr.N.S.Sivakumar in both Crl.O.Ps

**ORDER**

These Criminal Original Petitions have been filed under Section 482 Cr.P.C., to call for the records in S.T.C.No.372 of 2010 and S.T.C.No.373 of 2010 on the file of the Judicial Magistrate No.III,Coimbatore and quash the complaint.

2. As both parties in both Criminal Original Petitions are one and the same and matter arasing out of two cheques alleged to have been executed by the petitioner herein, resulted in S.T.C.No.372 of 2010 and S.T.C.No.373 of 2010 on the file of Judicial Magistrate No.III, Coimbatore. Both are taken together and common argument were heard and common Judgment is pronounced.

3. The brief facts to leading to role the quashment petitioner are as follows:-

The respondent herein filed the private complaint under Section 200 of Cr.P.C read with under Section 138 of Negotiable Instrument Act, alleging that the petitioner lend a sum of Rs.2,00,000/- as loan to the accused and the said sum of Rs.2,00,000/- was distributed into two installments to the accused by way of two IDBI cheques, namely (i) first cheque bearing No.714006 dated 28.04.2009 for a sum of Rs.1,00,000/- and (ii) second cheque bearing No.745801 dated 30.04.2009 for a sum of Rs.1,00,000/- in favour of the accused. The accused agreed to repay the same with interest at Rs.3/- per hundred per month i.e., 36% per annum and the accused also agreed to repay the same in 20 equal monthly instalments of Rs.13,000/- each, including interest. And to discharge the 20 installments the accused issued two post-dated cheques every month drawn on Central Bank of India, Coimbatore Branch and out of 20 cheques issued by the accused, while, 10 cheques were cleared, and there was a balance of 10 EMI cheques each of Rs.13,000/- is to be cleared and thus the balance debt was Rs.1,30,000/- and requested the complainant to present those 6 cheques again for collection. Believing the representations made by the accused, the complainant re-presented the above said 6 cheques for collection through his Bankers on 27.03.2010. The said cheques were again returned with endorsement 'Funds insufficient' on the same day i.e.,27.03.2010.

4. After issuing the statutory notice, he has filed the private complaint in S.T.C.No.372 of 2010 in respect of Cheque No.714006, dated 28.04.2009 and in S.T.C.No.373 of 2010 in respect of second cheque No.745801, dated 30.04.2009.

5. The petitioner herein has projected her case that the petitioner's husband wanted a sum of Rs.2,00,000/- from his friend Mr.Balaji, the respondent herein as loan for the purpose of his business. He demanded 20

blank cheque leaves signed by her husband. As the petitioner's husband had only one cheque leaf. The petitioner's husband requested and pressurized the petitioner to give 19 blank cheque signed by the petitioner. She as requested by her husband gave 19 blank cheque signed by her bearing No.005841 to 005850,005852 to 005860 of Central Bank of India, Coimbatore branch. The petitioner's husband Mr.Srinivasan issued one cheque bearing No.029961. All the 20 cheques were given for security purpose for the sum obtained by the petitioner's husband from respondent herein. The respondent filled the blank cheques for Rs.13,000/- each and presented 10 cheques including one given by her husband and all the 10 cheques were honoured and thereby totally for Rs.1,30,000/- is paid and realized.

6. Subsequently, as the respondent threat the petitioner family, fearing for life safety, petitioner lodged a complaint with the Inspector of Police, B4 Race Course (Crime) Coimbatore on 20.03.2010 and 7.09.2010. the act of the respondent is arbitrary and excess and constitutes a cognizable offence under Section 3 and punishable under Section 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act 2003. It is also an offence under Section 7 of the Tamil Nadu Money Lenders Act 1957. She is a debtor statutorily protected under the provisions of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act 2003. The lender went on to the extent of presenting the remaining ten cheques after filling them with exorbitant interest of 36% per annum which is prohibited by Money Lenders Act and got

it dishonoured and filed two criminal complaints separately one is for dishonour of six cheques and another for dishonour of four cheques, against the petitioner before the Judicial Magistrate III Coimbatore and the same were taken on file as STC.No.372 of 2010 and STC.No.373 of 2010 under Section 138 of the Negotiable Instruments Act.

7. Therefore, the liability on the part of the debtor is not legal and cannot be enforced U/s.138 N.I. Act. The rate of interest claimed by the respondent i.e., 36% per annum is a Kanduvatti which means an interest which work out to an interest rate more than which is fixed under Section 7 of the Money Lenders Act, contravening Section 3 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act and punishable under Section 4 of the same Act and hence, he filed this Criminal Original Petition for quashment.

8. The learned counsel for the petitioner in both the cases have submitted that the interest claimed by the respondent is exorbitant which is prohibited by T.N.P.C.E.I Act and hence it is illegal and the liability arising out of it therefore is not legally enforceable one. The trial Court failed to take note of the fact that the Government has fixed a maximum simple interest of 9% per annum for secured loans and a maximum simple interest of 12% per annum for unsecured loans to be charged by the Money Lenders by way of notification vide G.O.M.S.No.406(Cooperation) dated 5th July 1997.

9. The learned counsel for the respondent in both the cases submitted that initially, the very same petitioner herein have move the private complaint under Section 200 of Cr.P.C before the very same Judicial Magistrate No.III, Coimbatore, alleging the very same set of facts and further, alleged that the petitioner herein gave security cheques and also same blank cheques to the respondent herein. Further, alleging that the same was misused and further demanded "exorbitant" and "meter interest" and hence, wanted take cognizance of offence.

10. With that being the case, however the Judicial Magistrate rejected her petition and hence, she filed a Criminal Revision 669 of 2011 before this Court and after contest Hon'ble Mr.Justice P.Devadoss by an order dated 24.10.2016 have set aside the impugned order passed by the Judicial Magistrate No.III, Coimbatore in Crl.M.P.No.2005/2011 and further directed the trial Magistrate to restore the private complaint in Crl.M.P.No.2005 of 2011 filed by the petitioner herein in respect of allegation of levy of "exorbitant" and "meter interest" and hence, this petition is not maintainable and prayed for dismissal.

11. After hearing, both the parties and also perusing the private complaint filed before the trial Court in both the cases and also the private

complaint given by the petitioner Mythili in Crl.M.P.No.2005 of 2011 which was originally dismissed by the trial Magistrate. However, on revision, the same was allowed in Criminal Revision No.669 of 2011 on 24.10.2016. It remains to be stated that in both the private complaint filed by the respondent herein, it is specifically averred by the respondent herein that accused/petitioner herein to repay the said amount with interest at Rs.3/- per hundred per month.

12. On the contrary, there is no whisper in the statutory notice issued by him. The attention of this Court is also drawn to the fact that reply notice sent on behalf of the petitioner on 17.04.2010 wherein, the petitioner herein have stated that respondent/complainant is a money lender who lends money on exorbitant interest namely Meter vatti, Kanthuvatti and he specifically stated that he has not agreed to repay the same with interest at 36% per annum which is prohibited under the Tamil Nadu Prohibition of Charging Exorbitant Interest Act 2003 (Tamil Nadu Act 38 of 2003)

> <u>"Meter Vatti"</u> means an interest which will work out to an interest rate more than that fixed by the Government under Section 7 of the Money-lenders Act, for every day on the loan amount not paid within the stipulated time;
>
> <u>"Kandhu Vatti"</u> means an interest which will work out to an interest rate more than that

fixed by the Government under Section 7 of the Money-lenders Act;

13. On consideration of the statutory notice issued by the respondent/complainant and the reply notice therefore along with the complainant in this S.T.C.No.372 of 2010 and 373 of 2010 along with Crl.M.P.No.2005 of 2011 filed by the petitioner herein, this Court is of the considered view that whether there was an agreement between the parties as to the levy of interest in respect of the amount so lend as alleged by the respondent/complainant and whether such a interest is 36% and whether the respondent herein is a money lender has prescribed under the relevant act are purely matter of evidence that has to be let in before the trial Magistrate Court and the same cannot be gone into in quashment proceedings under Section 482 of the Cr.P.C. Besides, it is seen that with regard to same contention of the petitioner herein she had already moved the concerned Judicial Magistrate viz., Judicial Magistrate III,Coimbatore alleging levy of Meter vatti which is prescribed under Tamil Nadu Prohibition of Charging Exorbitant Interest Act 2003 and the same is directed to be considered and dispose of in accordance with law by the specific direction of this Court in Criminal Revision No.669 of 2011 dated 24.10.2013 and hence, this Court is of the considered view that the various plea raised by the petitioner are being a matter for evidence which can be gone into only by the trial Magistrate and

Crl.M.P is pending before the trial Magistrate as to whether the interest alleged in this private complaint amounts to Meter vatti is defined under the Tamil Nadu Prohibition of Charging Exorbitant Interest Act 2003 and hence, this Court is of the considered view that all the points raised by the petitioner herein being fact-in-issue for which evidence has to be let in during the course of the trial and hence, this Court is of the considered view that this petition is devoid of merits for exercising the power under Section 482 of Cr.P.C.

14.In this view of the matter, both the Criminal Original Petitions are dismissed with direction to the trial Magistrate that both the cases of S.T.C.No.372 and S.T.C.No.373 of 2010 and Crl.M.P.No.2005 of 2011 can be taken up for simultaneous trial and dispose of in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.



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Index:Yes
Internet:Yes

To

1.The Judicial Magistrate No.III,Coimbatore

2. The Public Prosecutor,
High Court, Madras.

**RMT.TEEKAA RAMAN,J.,**

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**Order in**
Crl.OP No.11151 of 2011
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