

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2017

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Cr1.O.P No.15605 of 2011

and

M.P.Nos.1 and 2 of 2011

N.K.Rajamani ... Petitioner

vs.

V.Vanchimuthu ... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to the C.C.No.12924 of 2009, on the file of the learned IX Metropolitan Magistrate, Saidapet, quash the same by allowing this Criminal Original Petition.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondent : No Appearance

JUDGMENT

This petition is filed to call for the Records in C.C.No.12924 of 2009 on the file of the Learned IX Metropolitan Magistrate, Saidapet and quash the same as illegal.

2.I heard Mr.R.Marudhachalamurthy, learned counsel appearing for the petitioner and there was no representation for the respondent and perused the entire records.

3.The case of the petitioner is that the petitioner herein is the accused in the above C.C.No.12924 of 2009 on the file of the Learned IX Metropolitan Magistrate, Saidapet which was taken on file based on private complaint filed by the respondent file under Section 200 Cr.P.C. for the alleged offences under Sections 138 and 142 of Negotiable Instruments Act, 1881.

4.It is the further case of the petitioner is that the petitioner was working as a Headmaster in a Panchayat Union School and her husband namely Marimuthu was engaged in Travels business by lending out car and vans. About 11 years ago, during the course of her husband's business, a hand loan was raised from one Mr.Kannan, who is a financier, for which signed pronotes and the Cheque book and pass book of petitioner's was entrusted as security.

5.Subsequently the said loan was repaid in time by the petitioner's husband to Mr.Kannan and the above instruments entrusted with said Kannan was received back. However it was found that 4 Cheques bearing Nos.015761, 015763, 015764, 01569 was torn and retained by the said Kannan and some pronotes were also found retained by him.

6.When petitioner's husband questioned the same, it was replied by said Kannan those instruments were retained, since the petitioner's husband remain due in interest and hence some amount went default as unpaid. Thereupon the petitioner's husband preferred a complaint on 25.11.2008 before the concerned police to take criminal action against the complainant/respondent stating that 4 Cheques bearing Nos.015761, 015763, 015764, 01569 of his wife's/the petitioner's cheque book was torn and retained by said Kannan and some pronotes were also retained by him.

7.However, the said Kannan and his accomplice namely Vanchimuthu the respondent herein, one Subramani and Sivaprakasam chose to file a money suit and two complaints under Sections 138 and 142 of Negotiable Instruments Act, 1881, respectively, on the strength of the above instruments given as Security as if they went dishonored for the amount due to them. Originally the respondent is unknown to the petitioner and her husband. Moreover since she is a Headmaster in a Government School, there was no necessity for her to receive amount from the above persons.

8.The case on hand pertains to C.C.No.12924 of 2009 on the file of the Learned IX Metropolitan Magistrate, Saidapet filed under Section 138 and 142 of Negotiable Instruments Act, 1881, by the respondent herein namely Vanchimuthu on the basis of the Cheque bearing No.015763, which went dishonored on 03.02.2009.

9.The above complaint is filed with ulterior thought to extract money from the petitioner, besides to harass her. The case of the respondent is utter false and the same can be

understood from the fact that the case pertaining to one Subramani in C.C.No.61 of 2009 on the file of the Leaned Judicial Magistrate, Dharapuram filed under Sections 138 and 142 of Negotiable Instruments Act, 1881 came to be dismissed as early as on 19.05.2010.

10. Therefore invoking the inherent jurisdiction of this Court under section 482 Cr.P.C, the petitioner is before this Court seeking to quash the Charge sheet filed in C.C.No.12924 of 2009 on the file of the Leaned IX Metropolitan Magistrate, Saidapet.

11. On careful perusal of the case records, the Quash petition and grounds thereon, it is observed that the case of the petitioner as projected by him involves a sequence of acts and transactions from the year 2000 to 2010, which according to the petitioners form the basis of the above false complaint.

12. It is further noticed that the petitioner's husband's complaint lodged before the police authority and as well as the averments made in the quash petition herein, there is no say as to when the loan was raised by them, the date of repayment made. It is relevant to note here that though the petitioner claims that the complaint was lodged before the concerned police and there was exchange of notice between the said Kannan and the petitioner's husband, the same remains a question, since they same unsupported by postal receipts, acknowledgments or CSR. Therefore, this Court is not in a position to accept the contention of the petitioner, since except the above ground there is no other ground was raised by the petitioner/accused.

13. In view of the above disputed facts and rebuttable arguments in the light of the uncertain transactions, which are required to be established by sufficient oral and documentary evidence by either side, this Court is of the opinion that the case on hand deserves a full fledged trial.

14. In the result:

(a) this Criminal Original Petition fails and accordingly dismissed. It is made clear that any observation made in the above Criminal Original Petition shall not have any impact on the Trial of above C.C.No.12924 of 2009, on the file of the leaned IXth Metropolitan Magistrate, Saidapet, Chennai, and also shall not have any impact on Civil Litigations, if any pending between the parties herein;

(b) the learned IXth Metropolitan Magistrate, Saidapet, Chennai, is directed to dispose the C.C.No.12924 of 2009 within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1 The IX Metropolitan Magistrate,
Saidapet, Chennai.

2 do thro the Chief Judicial Magistrate,
Egmore, Chennai.

3 The Section Officer,
VR Section, High Court, Chennai.

+1cc to Mr.M.Guruprasad Advocate SR.No.75493

Pre-Delivery Judgment made in
Crl.O.P No.15605 of 2011
and
M.P.Nos.1 and 2 of 2011

SDR 23.11.2017

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