IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.01.2017

CORAM

THE HONOURABLE MR. JUSTICE N.AUTHINATHAN

Crl.O.P. No.16472 of 2010
& M.P.Nos.1 & 3 of 2010

Farida Sulaiman .. Petitioner

versus

P.Vijayakumar .. Respondent

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.70 of 2009 on the file of the learned II Additional District Munsiff, Pondicherry and quash the same.

For Petitioner : Mr.Y.Ramanaiah
for Mr.M.Devaraj
For Respondent : Mr.V.R.Appaswamee

O R D E R

This Criminal Original Petition has been filed by the petitioner to quash the proceedings in C.C.No.70 of 2009 on the file of the learned II Additional District Munsiff, Pondicherry.

2.The petitioner is the accused in C.C.No.70 of 2009 on the file of the learned II Additional District Munsiff, Pondicherry. The respondent is the complainant. It is a private complaint preferred by the respondent under Section 200 Cr.P.C. for the offences punishable under Sections 138 and 142 of the Negotiable Instruments Act, 1881.

3.In the complaint, the respondent alleged that the petitioner herein borrowed a sum of Rs.75,000/- from him on 20.07.2006 for her business and family expenses and agreed to repay the same by 20.10.2006. It is further alleged in the complaint that the petitioner has issued cheque in question for Rs.75,000/- on 20.10.2006 in his favour for the discharge of the said debt. The cheque was dishonoured by the bank when presented for collection. Thereafter, the respondent issued notice dated 01.12.2006 calling upon the petitioner to pay the amount. The petitioner sent a reply denying her liability. Thereafter, the present complaint has been filed by the complainant. The learned Magistrate has taken the complaint on file and issued summons.

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4.The learned counsel for the petitioner would submit that the petitioner has not signed the cheque in question and the complaint does not make out a case. The learned counsel relied on the judgment of the Hon'ble Supreme Court in K.K.SIDHARTHAN vs. T.P.PRAVEENA CHANDRAN [(1996) 6 SCC 369] wherein it has been held that the drawer is not liable when the cheque was presented by drawee after drawer's instruction to the bank to stop payment became known to the drawee.

5.The learned counsel for the petitioner also relied on the decision in SUBBURAM vs. RAJA GURU [(2008) 1 MLJ (Crl) 980] wherein this Court on facts held that the averments in the complaint itself rebutted the presumption. On that basis, the complaint has been quashed.

6.The learned counsel for the respondent opposed the petition. He further submitted that the learned Magistrate has taken cognizance of the offences and thereafter, issued summons to the petitioner.

7.Heard the learned counsel for the petitioner and the learned counsel for the respondent.

8.If the complaint on the face of it does not disclose commission of an offence, the High Court in its jurisdiction under Section 482 Cr.P.C. can quash the same. The defence of the accused cannot be considered at this stage. A careful perusal of the present complaint filed by the petitioner would show that the allegations make out a case for an offence under Section 138 of the Negotiable Instruments Act. As there are sufficient allegations in the complaint it cannot be said that the learned Magistrate has committed an error in taking cognizance and issuing summons to the petitioner. The decisions relied on by the learned counsel for the petitioner are not applicable to the facts at hand.

9.This Court does not find any ground to quash the complaint and hence, the Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sri

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To

1.The Second Additional District Munsif,
Pondicherry.

2.The Public Prosecutor, (Pondy)
High Court, Madras.

+ 1 cc to Mr.V.r. Appaswamee, Advocate SR.1821
+ 1 cc to Mr. M.Devaraj, Advocate SR.1763

Crl.O.P. No.16472 of 2010

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