



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2017

CORAM

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

Cr1.O.P.(MD) No.413 of 2017

and

Cr1.M.P(MD)No.382 of 2017

WEB COPY

Mrs.Alicia Rodrigo

: Petitioner/Accused

-vs-

Mr.T.Xavier Fernando

: Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records the complaint in C.C.No.160 of 2011 pending on the file of the Judicial magistrate, Thiruchendur and quash the proceedings against the petitioner.

For Petitioner : Mr.Vairam Santhosh

O R D E R

This petition has been filed to call for the records of the complaint in C.C.No.160 of 2011 pending on the file of the Judicial Magistrate, Thiruchendur and quash the same against the petitioner.

2.The case of the prosecution is that the petitioner is a teacher and she borrowed a sum of Rs.3,50,000/- from one Mrs.Mesil Miranda in various installments from 2008 to May 2009 for her urgent family expenses and at the time, the said Mesil Miranda demanded signed blank cheques as surety and the petitioner also gave signed blank cheques without filling the amount and date as insisted by Mesil Miranda for security and also gave her husband's signed Rs.20 stamp paper as surety for the loan availed and that on 28.03.2011, the petitioner lodged a complaint before the Superintendent of Police, Tuticorin District, regarding the illicit activity of Mesil Miranda and the same was enquired by the Inspector of Police, Tiruchendur and at the time of enquiry, the said Mesil Miranda gave a statement to the police to the effect that no money was lent to the petitioner and she do not have any document regarding the petitioner and that in the interregnum, the respondent, who is the brother in law of the said Mesil Miranda, used the cheque of the petitioner bearing registration No.971410 drawn on ICIC Bank and filled the amount as Rs.5,00,000/- and



presented the same on 21.01.2011 for collection, which was dishonoured due to Insufficient Fund and that suppressing the above facts, the respondent filed a complaint in C.C.No.160 of 2011 before the Judicial Magistrate, Thiruchendur. It is further submitted that the petitioner did not avail Rs.5,00,000/- at any time and the respondent did not produce any material evidence or documents to show the loan amount and that the respondent did not exhibit that the alleged loan amount was a legally valid debt, as he did not show any records of income tax and it is further contended that the Apex court has held on the point of cheque given for security and does not for the purpose of repayment of legally recoverable debt. Hence, he prayed that the complaint filed in C.C.No.160 of 2011 has to be quashed.

3. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

4. It is seen from the records that admittedly, the alleged cheque was issued by the petitioner and the signature found in the cheque was also admitted by the petitioner. Further, it is admitted that the cheque was returned for insufficient funds and in this regard, a statutory notice was also issued to the petitioner. Whether the petitioner has borrowed the amount as alleged by the respondent is true or not is the question to be decided only after full fledged trial and it cannot be decided in this quash petition. Hence, this court is of the considered view that since there are prima facie materials available against the petitioner, the relief sought for by the petitioner cannot be granted at this stage.

5. Hence, this petition is **dismissed** with a direction to the trial court to post the case in C.C.No.160 of 2017 on day today basis and dispose of the same, purely on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To
The Judicial Magistrate,
Thiruchendur.

+1cc to M/s. G.VAIRAM SANTHOSH Advocate in SR. No.15913

ER

JS/MR/SAR.3/7/04/2017/2P-3C

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