IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.10.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.OP.No.30018 of 2015
and
MP.Nos.1 of 2015 and 2149 of 2016

D.Sarala ... Petitioner

Vs.

G.Narayanan ... Respondent

PRAYER : This Criminal Original Petition has been filed under Section 482 of Cr.P.C, to call for the records relating to C.C.No.4100 of 2015 on the file of the XXIII Metropolitan Magistrate, Saidapet and to quash the same.

For Petitioner : Mr.A.Vivek

For Respondents : N.Kumar Rajan for M/s.Kumar and Baskar

ORDER

This petition has been filed by the accused to quash the proceedings in C.C.No.4100 of 2015 on the file of the XXIII Metropolitan Magistrate, Saidapet, Chennai.

2. The learned counsel for the petitioner/accused has submitted that the respondent herein has filed a private complaint stating that the petitioner herein has committed an offence punishable under Section 420 of IPC and based on the said complaint, the learned XXIII Metropolitan Magistrate, Saidapet, has taken the case on file in C.C.No.4100 of 2015. He further submitted that as per the complaint, the petitioner herein borrowed a sum of Rs.3,50,000/- on 17.06.2014 and with a view to discharge the said debt, the petitioner herein has issued a cheque for Rs.3,50,000/- dated 16.03.2015 and when the said cheque was presented in the bank, it was returned as "Accounts closed". He further submitted that after receipt of the bank memo with regard to dishonour of cheque, the respondent has issued a statutory notice to the petitioner herein, the same was not served. He further submitted that since the cheque

was returned on the ground of accounts closed, the offence under Section 138 of the Negotiable Instruments Act alone will attract and therefore, the respondent should have filed a complaint under Section 138 of the Negotiable Instruments Act. On the contrary, he has filed a complaint stating that the petitioner herein has committed an offence punishable under Section 420 IPC and the same is not maintainable.

3. Per contra, the learned counsel for the respondent/complainant has submitted that the petitioner has issued a cheque after closing bank account and hence certainly Section 420 IPC will attract.

4. In the complaint in Paragraph No.7, the respondent has stated that the petitioner herein has issued the cheque after closing bank account with an intention to cheat him.

5. It is relevant to refer to Section 138 of the Negotiable Instruments Act which reads thus:

> "138. Dishonour of cheque for insufficiency, etc., of funds in the account:-
>
> Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years or with fine which may extend to twice the amount of the cheque, or with both:
>
> Provided that nothing contained in this section shall apply unless-
>
> (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of it validity whichever is earlier.
>
> (b) the payee of the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the

return of the cheques as unpaid; and

> (c)the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.
>
> Explanation.- For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability."

6. A plain reading of the aforesaid section would clearly show that if the cheque is issued by a person from the account maintained by him and the said cheque is returned for non payment, aforesaid Section will attract. Whereas, in this case, the complainant has stated in Paragraph No.7 of the complaint that the petitioner herein has issued the cheque after closing her bank account. The petitioner also stated in her petition in Paragraph No.4 that she has closed her bank account in the month of July 2010. However, she has taken a stand that in the year 2009, she has borrowed a sum of Rs.30,000/- from the respondent and at that time, the respondent has obtained signatures in blank papers and also in three blank cheques. She further stated that subsequently, she has repaid the said loan, but the respondent did not return the said cheques and in the year 2015, he has filled up one of the cheques and filed the aforesaid complaint.

7. Admittedly, the petitioner closed her bank account in the month of July 2010. The cheque which was filed by the respondent contains the date as 16.03.2015. As per Section 118 of the Negotiable Instruments Act, until it is contrarily proved, it is to be presumed that it is drawn on such a date. So, until it is contrarily proved that the date which is mentioned in the said cheque has to be taken as the date on which the said cheque was drawn. Since, the petitioner is disputing the date of issuance of the cheque, the said fact can be decided only after taking evidence. The said question of disputed facts cannot be decided by this Court in the petition filed under Section 482 of Cr.P.C.

8. As already pointed out that for attracting Section 138 of the Negotiable Instruments Act on the date of issuance of cheque, the drawer of the cheque should have maintained a bank account. In this case, the cheque contains the date as 16.03.2015 but admittedly the account was closed by the petitioner in the month of July 2010 itself. Therefore, Section 138 will not attract.

9. Whether the cheque was issued on 16.03.2015 or in the year 2009 itself is the matter of appreciation of evidence and the said question can be decided only after recording the evidence by the Trial Court. Therefore, this petition is liable to be dismissed.

10. In the result, this petition is dismissed. Consequently, connected miscellaneous petitions are closed. It is open to the petitioner to putforth her contentions before the Trial Court.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vv

To

1. The XXIII Metropolitan Magistrate,
Saidapet

2. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.Kumar and Baskar , Advocate, S.R.No.72356
+1cc to Mr.A.Vivek, Advocate, S.R.No.72526

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MP(CO)
CS/10/12/2018