

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.22562 of 2011

and

M.P.Nos.1 & 2 2011

N.Divya .. Petitioner/Accused-3

Vs

G.Deenadayalan .. Respondent/Complainant

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records relating to C.C.No.382/2010 on the file of Judicial Magistrate, No.I, Udumalpet and quash the same.

For Petitioner : Mr.S.N.Arunkumar
for M/s. M.N. Balakrishnan
For Respondent : Mr.W.Camyles Gandhi.

O R D E R

The petitioner herein has been arrayed as 3rd accused in C.C.No.382/2010 on the file of the learned Judicial Magistrate, No.I, Udumalpet for alleged offences under Section 138 of Negotiable Instruments Act.

2. The submissions of the petitioner is that the petitioner has been falsely implicated in the above case.

3. The brief facts is that the petitioner's husband one K.Natarajan, who is the proprietor of "Jeyalakshmi Agency" doing furniture business and the respondent is known to him for the need of the business. The petitioner's husband is said to have taken a hand loan of Rs.1,00,000/- on 06.06.2009. During the loan agreement, the petitioner and her husband is said to have executed the promissory note and promised that the amount could be returned within a period of one year with 12% interest. Even, after the period of one year the said loan was not paid. The petitioner and her husband had approached the complainant again and again to pay the interest amount for the principle. A cheque bearing No.014360 dated 29.07.2010 drawn on Syndicate Bank, Udumalaipet for a sum of Rs.1,00,000/- was handed over by the complainant and the original promissory note was also returned. When the cheque was submitted for collection, it was returned for the

reason " Exceeds Arrangements". Hence, the case in C.C.No.382/2010 was filed by the respondent against the petitioner and her husband and the firm.

4. The first accused is the proprietor firm and the second accused is petitioner's husband, who is the proprietor of the first accused, no reference to the petitioner who had never been a partner and she has not signed the issued cheque. As she is not partner of the first accused firm she does not participate in any of the affairs and business of the first accused firm and she could not held liable to the business of the first accused firm.

5. On perusal of the complaint it could be seen that except for the averments that the petitioner and her husband had approached the respondent for loan. There is no other imputation against the petitioner in the list of documents and also there is no mention about the copy of the partnership on which basis the respondent had arrayed as petitioner/accused in the case. The decision reported in the cases of Hon'ble Supreme Court citations S.M.S. Pharmaceuticals Ltd., Vs Neeta Bhalla & anothers, 2007 (2) CTC 86 and K.K.Ahuja Vs. V.K.Vora and another (2009) 10 Supreme Court Cases 48 are relied upon.

6. In view of the above, the Criminal Original petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

7. The learned Judicial Magistrate, No.I, Udumalpet is directed to complete the trial in C.C.No.382/2010 within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

dss

To

1. The Judicial Magistrate-No.1.Udumalpet.
 - 2.-do- Thro' the Cheif Judicial Magistrate, Coimbatore
 3. The Public Prosecutor, High Court, Madras.
- Copy to: The Section Officer, Criminal Section,
High Court, Madras.

+ 1 cc to Mr. W. Camyles Gandhi, Advocate SR.43565

CRL.O.P.No.22562 of 2011

SV(CO)

<https://hcservices.ecourts.gov.in/hcservices/>

EU(25/07/2018)