

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 21.06.2018
CORAM
THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.15753 of 2018
and CRL.M.P.Nos.8055 & 8056 of 2018

A.K.Rajeswari,
W/o.A.R.Kathiravan,
Proprietrix,
M/s.R.K.S.Tex,
S.F.No.510, M.R.S.Garden,
Mangalam Road,
Sultanpet, Tirupur 641 663. ... Petitioner/Sole Accused

Vs

M/s.Aruna Gangan & Co.,
Rep. by its Partner,
A.Gneshamoorthy,
S/o.Arunachalam,
3/49-A, Aasari Thottam,
Murugampalayam [Post],
Tiruppur 641 663. ... Respondent/Complainant

Criminal Original Petition filed under Section 482
Cr.P.C., praying to call for the records in STC.No.380 of 2017
on the file of the Judicial Magistrate No.II, Tiruppur and
quash the same.

For Petitioner : Mr.VC.Janardhanan

O R D E R

This petition has been filed to quash the proceedings in
STC.No.380 of 2017 on the file of the Judicial Magistrate
Court No.II, Tiruppur.

2.Heard the learned counsel for the petitioner and
perused the materials placed on record.

3.For the sake of convenience, the parties will be
referred to as complainant and accused. It is the case of the
complainant that they are into fabric dying and the accused
had taken up job work from the complainant from 13.09.2014 to
24.12.2014, towards which, the accused was liable to pay
Rs.14,37,203/-. In discharge of this liability, the accused
gave the impugned cheque dated 14.11.2016, which when
presented by the complainant was dishonoured for
"insufficiency of funds". The complainant issued a statutory
notice on 12.12.2016, for which, the accused gave a reply
notice dated 29.12.2016. Since the accused did not make the

payment, the complainant has initiated a prosecution under Section 138 of Negotiable Instruments Act, 1881 and the same is now pending in STC.No.380 of 2017 before the Judicial Magistrate-II, Tiruppur. For quashing which, the accused is before this Court.

4.Mr.Janardhanan, learned counsel appearing for the accused submitted that the impugned cheque was given by the accused to one Subbaiya, who was working in the firm of the accused; that the said Subbaiya had in collusion with the complainant had handed over the cheque to the complainant, though there was no due from the accused to the complainant; that on the complaint given by the accused, the police have registered a case in Crime No.201 of 2018 on 07.05.2018 under Sections 408, 477A, 471, 438 and 506[i] IPC against the said Subbaiya; he also contended that during the course of investigation in Crime No.201 of 2018, the Police have recorded 161[3] Cr.P.C. statement of the complainant, who has admitted that the impugned cheque was given by Subbaiya and not by the accused.

5.In the opinion of this Court, in the light of the law laid down by the Supreme Court in S.Krishnamurthy Vs Chellammal reported in [2015] 4 SCALE 371, disputed questions of fact cannot be gone into in a petition under Section 482 Cr.P.C. Under Section 139 of Negotiable Instruments Act, 1881, the burden can be discharged by the accused by preponderance of probability and not by proof beyond reasonable doubt as held by the Supreme Court in Rangappa Vs Sri Mohan reported in [2010] 11 SCC 441. The burden is on the complainant to first prove that there was a valid debt and that the impugned cheque was given by the accused towards the said debt. Only thereafter, the burden shifts on the accused under Section 139 of Negotiable Instruments Act, 1881 as stated above, can be discharged by preponderance of probability. Under such circumstances, this petition is closed with liberty to the accused to raise all the points before the trial Court.

6.Mr.Janardhanan, learned counsel appearing for the accused submitted that the presence of the accused before the trial Court may be dispensed with.

7.Accepting his submission, the accused shall surrender before the trial Court within two weeks from the date of receipt of a copy of this order. On such surrender, she shall file an application under Section 436 Cr.P.C. for bail. The trial Court shall release the accused on bail on the same day, on she executing a bond for Rs.10,000/- with two solvent sureties. Thereafter, the accused shall appoint an Advocate on special vakalat. The accused shall give an undertaking that she will not dispute her identity and that her Advocate will cross-examine the witnesses on the day they are examined in-chief, as held by the Supreme Court in Vinodh Kumar Vs

State of Punjab reported in 2015[1] MLJ [Cr1] 288. The accused shall appear before the trial Court to answer the question under Sections 251 Cr.P.C., 313 Cr.P.C. and on the date of judgment. For other hearings, if the accused files an application under Section 317 Cr.P.C., the same shall be liberally considered and thereafter, the presence of the accused shall stand dispensed with. If the accused adopts any dilatory tactics, the trial Court shall insist upon the presence of the accused. If the accused absconds, a fresh FIR can be registered against her under Section 229-A of IPC. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gya

To
The Judicial Magistrate No.II,
Tiruppur.

+1cc to M/s.P.Muthukumarasamy, Advocate Sr.No.39406

PPA(CO)
sm:29.6.2018

CRL.OP.No.15753 of 2018

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