



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.OP[MD]No.9650 of 2015

and

M.P. (MD) Nos.1 and 2 of 2015

K.Gayathiri

... Petitioner

Vs.

S.Samy Nathan

... Respondent

PRAYER: Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to STC No.101 of 2014 on the file of the learned Judicial Magistrate, Uthamapalayam, Theni and quash the same as illegal forthwith.

For Petitioner : Mr.S.Palanivelayutham

For Respondent : Mr.S.Saravanakumar

O R D E R

This petition is filed to quash the charge sheet in STC No.101 of 2014 on the file of the learned Judicial Magistrate, Uthamapalayam, Theni.

2.The learned counsel appearing for the petitioner would submit that the petitioner's husband namely Krishnakumar, had borrowed a loan from the respondent/complainant and the petitioner had no transaction with him. Further, he submitted that the amount borrowed on 14.10.2012 and the cheque was given to the respondent on 14.12.2012. The same was presented on 14.02.2013 in the State Bank of India, Chinnamanoor Branch beyond the period of validity of the cheque. However, the same was returned with an endorsement as insufficient funds. Hence, after completion of statutory formalities, the petitioner has given a complaint. Based on the same, the present charge sheet has been filed. He further submitted that the petitioner is being a lady, her personal appearance before the Court below may be dispensed with.

3.On the other hand, the respondent/complainant submitted that the petitioner had sought a loan of Rs.15,00,000/- for urgent needs and promised to pay within a period of two months. Since the petitioner is known to the respondent, the said request was acceded and the loan of Rs.15,00,000/- was given. For discharging the said liability, the respondent had given a cheque
<https://hcrs.cerpts.gov.in/1495184>, dated 14.12.2012 to the Axis Bank. Thereafter, the respondent deposited the cheque on 14.12.2013 with his Banker namely, State Bank of India which was returned as insufficient



funds with the memo dated 28.02.2013. After complying with the statutory provisions, the present complaint has been filed.

4.The learned counsel for the petitioner relied upon the judgment in the case of **P.Eswaran Vs. J.A.Abdul Hameed** reported in **2006 (5) CTC 296**, wherein, the issue whether the accused can rebut the presumption contemplated under Section 139 of the Negotiable Instruments Act, 1881.

5.The learned counsel for the respondent would submit that in this case, the trial is yet to be commenced. Hence, the decision is not applicable to the present case on hand. He further submitted that the case is of the year 2014 and due to pendency of the criminal original petition, the case could not be proceeded any further and four years have been lapsed without any progress.

6.Considering the rival submissions, this Court is not inclined to entertain the petition and the petition is liable to be dismissed. Accordingly, this criminal original petition is dismissed. However, the trial Court is directed to dispose of the trial within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Crl. Side)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The Judicial Magistrate,
Uthamapalayam, Theni District

+1 cc To Mr.S.Palanivelayutham, ADVOCATE IN SR NO.95063
+1 cc TO MR.R.Suriya Narayanan, ADVOCATE IN SR NO.94884

rmi
MK/KK/PM/SAR 3/28.12.2018/2P/4C

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