

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.7358 of 2019
and
Crl.M.P.No.4090 of 2019

G.Yasmeen

... Petitioner

Vs.

M.Padmavathi

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to set aside the docket order dated 18.02.2019 passed by the learned Judicial Magistrate - II at Chengalpet, in the petitioner's application in C.M.P.No.1628 of 2018 filed to discharge the petitioner and direct the learned Judicial Magistrate - II to decide the application on merits in accordance with law.

For Petitioner :Mr.R.Manickavel

O R D E R

This Criminal Original Petition has been filed seeking a direction to set aside the docket order dated 18.02.2019 passed by the learned Judicial Magistrate - II at Chengalpet, in the petitioner's application in C.M.P.No.1628 of 2018 filed to discharge the petitioner and direct the learned Judicial Magistrate - II to decide the application on merits in accordance with law.

2. It is seen from records that the petitioner filed a discharge petition under Section 251 r/w. 239 Cr.P.C. before the learned Judicial Magistrate - II, Chengalpet in C.M.P.No.1628 of 2018 seeking to discharge the petitioner from the calender case since the complaint filed for the offence under Section 138 of the Negotiable Instruments Act itself is not maintainable. The learned Magistrate returned the petition as not maintainable stating that as per the rule reported in 2012 (5) SCC 424 for

maintainability. But the rule cited was not dealt with under Section 138 of Negotiable Instruments Act. It is the strict rule in Supreme Court case in 2017, Meters and Instrument case, that in 138 Negotiable Instrument Act, case of discharge can only be done under Section 258 Cr.P.C., by the Magistrate on going through the complaint. Hence the prayer of discharge of the accused in the petition is not maintainable.

3. Considering the facts and circumstances of this case, this Court does not find any illegality or infirmity in the docket order dated 18.02.2019 made in CMP.No.1628 of 2018 before the learned Judicial Magistrate - II, Chengalpet.

Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS)

//True copy//

Sub Assistant Registrar

dh

To

1. The Judicial Magistrate - II,
Chengalpet, Kanchipuram District.

2.-do-Through'The Chief Judicial Magistrate, Kancheepuram

+lcc to Mr.R.Manickavel, Advocate SR.No.26623

सत्यमेव जयते

Cr1.O.P.No. 7358 of 2019

SKV (CO)
GMY (27/05/2019)

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