



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.10.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No.4239 of 2018

WEB COPY

Valsala Kumari

... Petitioner

Vs

M/s.Sree Gokulam Chit & Finance Co.(P) Ltd.,
Regd. Office at Chennai,
represented by Authorized Agent,
A.Chockalingam
Assistant Manager,
M/s.Sree Gokulam Chit & Finance Co (P) Ltd.,
15/99, 1st Floor, S.U.S.Building,
Palace Road, Thuckalay,
Kanyakumari District.

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the impugned proceedings in S.T.C.No.171 of 2016 on the file of the Judicial Magistrate Court, Padmanabhapuram, Kanyakumari District and to quash the same.

For Petitioner : Mr.M.R.Sreenivasan

For Respondent : No Appearance

O R D E R

This petition has been filed to quash the impugned proceedings initiated in S.T.C.No.171 of 2016 on the file of the Judicial Magistrate Court, Padmanabhapuram, Kanyakumari District for the offence under Section 138 of the Negotiable Instrument Act, by the respondent herein.

2.The learned counsel appearing for the petitioner would submit that there is absolutely, no legally enforceable debt and the alleged cheque was given to the respondent only as security purpose during the chit transaction. He further submits that after settled the entire amount to the respondent, the alleged cheque was misused by him and presented for collection only to claim further interest for the belated payment. Therefore, the complaint is nothing but a clear abuse of process of law. Hence, he prayed for quashing the criminal proceedings.



3.Heard the learned counsel appearing for the petitioner and perused the material available on records. Though notice served to the respondent and his name also printed in the cause list, no one is appeared on behalf of the respondent.

4.The respondent lodged a complaint for the offence punishable under Section 138 of the Negotiable Instrument Act, as against the petitioner alleging that the petitioner committed default in payment of chit amount and towards to settle the issue, the petitioner issued the cheque for a sum of Rs.16,20,225/- and on her instructions, it was presented and the same was returned for the reason 'in sufficient funds' and after causing statutory notice, the respondent initiated the complaint for the offence under Section 138 of the Negotiable Instrument Act as against the petitioner herein.

5.Perusal of the grounds would show that the same can be considered only during the trial, since it is a mixed question of fact and it cannot be considered by this Court under Section 482 of Cr.P.C.

6.Therefore, this petition is dismissed. Consequently, connected miscellaneous petition is also dismissed. However, the personal appearance of the petitioner before the trial Court is dispensed with, except the dates on which, the trial Judge insisted the personal appearance of the petitioner.

7.It is made clear that if any non bailable warrant is pending as against the petitioner, the petitioner is not entitled for the relief of dispense with her personal appearance before the trial Court. The learned Judicial Magistrate, Padmanabhapuram is directed to dispose of the case in S.T.C.No.171 of 2016, within a period of six months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS)

Arul

To

1.The Judicial Magistrate, Ramanathapuram

Order made in

CRL.O.P (MD) No.4239 of 2018

01.10.2019

TR(18.10.2019) 2P 2C

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