

**BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT****DATE : 15.11.2019****CORAM****THE HONOURABLE MR. JUSTICE V.PARTHIBAN****CRL. R.C. (MD) NO. 607 OF 2019****AND****CRL. M.P. (MD) NOS. 7555 & 7557 OF 2019**

WEB COPY

Kavitha

.. Petitioner

- Vs -

Karuppasamy

.. Respondent

Criminal Revision Case filed u/s 397 r/w 401 of the Code of Criminal Procedure, against the order dated 14.05.2019, passed by the learned Judicial Magistrate No.II, Sivakasi, Virudhunagar District, in Cr. M.P. No.1168 of 2019 in C.C. No.164 of 2018.

For Petitioner : Mr. V.Ilanchezhian

For Respondents : Mr. M.Jothi Basu

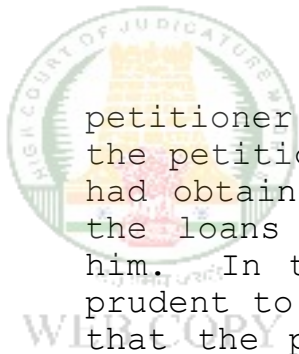
ORDER

The present revision has been filed against the dismissal of the petition filed by the petitioner for discharge in a case relating to offence u/s 138 of the Negotiable Instruments Act.

2. It is the case of the petitioner that the cheque belonging to the petitioner was used by the petitioner's husband towards the loan obtained by him for business purposes, during subsistence of the marriage. However, subsequent to the issuance of the cheque, differences arose between the petitioner and her husband due to which petition was filed before the Family Court. It is the further case of the petitioner that one of the person, by name, Kannan, from whom the petitioner's husband had borrowed money, had foisted the false case on the petitioner through the 2nd respondent and, therefore, sought for discharge, which was dismissed by the court below. Aggrieved by the said order, the present petition has been filed.

3. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the impugned order passed by the court below as also the decision relied on by the learned counsel for the respondent.

4. An analysis of the order passed by the court below reveals that the court below, on appreciation of the materials available before it held that the petitioner has not proved that the cheque was misused by the petitioner's husband and that the petitioner's husband has used the respondent to foist this false case on the



petitioner. Further, the court below held that even according to the petitioner, her husband, during the subsistence of the marriage, had obtained loans for business purpose and had not repaid many of the loans for which insolvency proceedings were initiated against him. In that backdrop, the court below held that it would not be prudent to discharge the petitioner at this point of time by holding that the petitioner has not committed any offence u/s 138 of the Negotiable Instruments Act, without holding a full fledged trial.

5. Reliance was placed on the decision of the Hon'ble Supreme Court in **Subramaniam Sethuraman - Vs - State of Maharashtra & Anr. (2004 (4) CTC 613)**, wherein the Hon'ble Supreme Court held that in a case u/s 138 of the Negotiable Instruments Act, a petition for discharge, by the accused, is not maintainable and that the trial has to be taken to its logical conclusion.

6. On a conspectus reading of the order passed by the court below, and also the decision in *Subramaniam Sethuraman's case (supra)*, this Court is of the considered view that the trial court has appreciated the facts in its entirety and has rendered a just and reasonable finding, which warrants no interference at the hands of this Court.

7. This revision petition, being devoid of merits, is accordingly dismissed. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

GLN

To
The Judicial Magistrate No. II
Sivakasi
Virudhunagar District.

+1 CC to M/S.G.M.LAW OFFICE, Advocate (SR-98642[F] dated 15/11/2019)

+1 CC to MR.V. ILLANCHEZIAN, Advocate (SR-99302[F] dated 19/11/2019)

CRL. R.C. (MD) NO. 607 OF 2019

15.11.2019

KM/ (20.12.2019) 2P 4C