

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED: 30.01.2020  
CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.O.P.No.24896 of 2013  
and M.P.No.1 of 2013

M.Devi ... Petitioner/ Accused  
-vs-

S.Saraswathi ... Respondent; Complainant

Prayer: Criminal Original petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.659 of 2012 on the file of the learned Judicial Magistrate, Tambaram, Chennai and quash the same as illegal.

For Petitioner : Mr.K.Kannan  
For Respondent : Mr.J.Ravindran  
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O R D E R

The respondent filed a private complaint against the petitioner before the learned Judicial Magistrate, Tambaram, under Section 198(1)(a) of Cr.P.C., for the offence punishable under Section 406 and 420 of IPC. The learned Magistrate had taken cognizance of the complaint on file in C.C.No.659 of 2012 and issued summons to the petitioner. After receiving the summons, the petitioner has filed the present petition under Section 482 Cr.P.C., seeking to quash the complaint in C.C.No.659 of 2012.

2.The learned counsel for the petitioner would submit that the petitioner has not issued any cheque. It is only the husband of the petitioner, who borrowed the money and issued the cheque. She neither received any money nor issued any cheque in favour of the respondent. She has only given an undertaking that her husband would repay the money. The learned counsel further submitted that there was a dispute between the petitioner and her husband, and they were living separately. Taking advantage of the same, the respondent had made this false complaint against the petitioner. The learned counsel further submitted that in the absence of receiving any money or issuing any cheque by the petitioner in favour the respondent, the complaint made against her is not maintainable. Therefore, the complaint is liable to be quashed.

3.On a perusal of records, in the complaint itself, it is stated that the husband of the petitioner has issued a cheque and not the petitioner. Even though in the complaint, it is stated that the petitioner has given an undertaking to repay the money, but, merely giving an undertaking for repayment of money

does not foist criminal liability on the petitioner and therefore, the criminal complaint made against the petitioner is not maintainable. Section 138 of Negotiable Instruments Act states that any cheque has to be issued for discharging a legally enforceable debt. Admittedly, in this case, the petitioner has not issued any cheque and her husband alone has issued the cheque. Therefore, the respondent/complainant has to make the petitioner's husband liable for the non-payment of money and on the issue of cheque. Under such circumstances, this Court by exercising its power under Section 482 Cr.P.C., is inclined to quash the complaint made against the petitioner in C.C.No.659 of 2012.

4. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

rm  
To

1. The Judicial Magistrate,  
Tambaram, Chennai.

2. The Public Prosecutor,  
High Court, Madras.

Crl.O.P.No.24896 of 2013  
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A.SK(09/03/2020)

सत्यमेव जयते

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