

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2020

CORAM

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

CRL.O.P.No.4626 of 2020
and
Crl.M.P.Nos.2637 & 2638 of 2020

Subhalakshmi RanganathanPetitioner/Accused
Vs.

Tamil Nadu Newsprint and Papers Limited
Represented by its Manager(Legal)
L.Sezhian, No.67, Mount Road
Guindy, Chennai 600 032. ... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the C.C.No.4433 of 2019 pending on the file of the FTC No.III Saidapet, Chennai and quash the same.

For Petitioner : Mr.Swarnam J.Rajagopalan

ORDER

This petition has been filed to call for the records relating to the C.C.No.4433 of 2019 pending on the file of the FTC No.III, Metropolitan Magistrate, Saidapet, Chennai and quash the same.

2. The learned counsel for the petitioner has submitted that based on the private complaint filed by the respondent for the alleged offence under Section 138 of the Negotiable Instruments Act, the Fast Track Court No.III, Metropolitan Magistrate, Saidapet, Chennai has taken the case on file and issued summons to the petitioner herein directing her to appear before him. Relying upon the E-Court case status, he contended that the learned Metropolitan Magistrate, Saidapet, at the time of taking cognizance has not recorded any reason and hence, taking cognizance of the case itself is against the provisions of Cr.P.C.

3. The learned counsel for petitioner has not produced the certified copy of the order passed by the concerned Metropolitan Magistrate with regard to taking cognizance, on the contrary, he has relied upon the E-Court case status. He cannot rely upon the said case status because, the case status is being up-loaded by the staff of the Court, it may not have any accuracy. Even in the said case status, it is stated that the Magistrate has examined the complainant as PW1 through

proof affidavit and also marked Exs.P1 to P9 and he has satisfied as prima facie case is made out.

4. As per the illustrations (e) and (f) of the Section 114 of the Indian Evidence Act, 1872, the Court may presume that the judicial Magistrate has taken cognizance of the offence after following the procedures prescribed under the law. For taking cognizance of the offence under Section 138 of the Negotiable Instruments Act, the Court has to see whether the accused has issued the cheque, whether the said cheque was presented before the bank for collection within the validity period, whether the said cheque was dishonoured on the ground of funds insufficient, whether the statutory notice was issued within the stipulated period, whether the said notice was received by the accused and whether the complaint is filed within the statutory period. If the aforesaid conditions are satisfied then, there is no bar for the Magistrate to take cognizance in respect of the offence under Section 138 of the Negotiable Instruments Act. In this case, the petitioner has not stated that any of the aforesaid conditions is not satisfied. In respect of whether the accused is liable to pay the amount or not has to be decided at the time of the trial.

5. For the aforesaid reasons, this Court does not find any merit in this petition. Accordingly, this Criminal Original Petition is dismissed.

6. The learned counsel for the petitioner has submitted that the petitioner (women) is aged about 84 years and she is native of Kerala State and hence, he requested to dispense with her personal appearance before the trial Court.

7. Considering the aforesaid submissions, the personal appearance of the petitioner before the trial Court is dispensed with on a condition that she should appear before the trial Court as and when required by the trial Court. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar (CS-III-MDU)

//True copy//

Sub Assistant Registrar

dna

To

1. The Metropolitan Magistrate,
FTC No.III, Saidapet,
Chennai.

+lcc to Mr.Swarnam J.Rajagopalan, Advocate SR.No.17679

CRL.O.P.No.4626 of 2020

and

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GMV (29/09/2020)



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