



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.11.2020

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD)No. 22630 of 2016

and Crl.M.P.(MD) Nos.11831 & 11832 of 2016

WEB COPY

A. Roselet Bai

...Petitioner/Sole accused

-Vs-

M.Maryndo V.Rayen

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records in C.C. No.254 of 2016 on the file of the Fast Track Court (Magistrate Level), Tuticorin and quash the same.

For Petitioner
For Respondent

: Mr. G. Murugendran
: Mr. Ka. Ramakrishnan

O R D E R

This petition has been filed to quash the proceedings in C.C. No.254 of 2016 on the file of the Fast Track Court (Magistrate Level), Tuticorin, for the offence under section 138 of the Negotiable Instruments Act, as against the petitioner.

2. It is averred by the petitioner that the respondent has initiated a proceedings for the offence under section 138 of the Negotiable Instruments Act, alleging that the petitioner and her husband jointly borrowed a sum of Rs.11 lakhs from the respondent herein, in order to meet out their urgent business needs and they also assured that the same will be returned with rate of interest 2% p.m. In order to repay the amount, they also issued a cheque in favour of 'Shaleo Impex' for a sum of Rs.15 lakhs including interest. The said cheque was presented for collection by the respondent and the same was returned with endorsement as 'account closed'. After issuance of Statutory notice, the respondent has lodged a complaint. It is further averred that the cheque was not at all issued in favour of the respondent and admittedly, the cheque was issued in favour of 'Shaleo Impex'. Therefore, the present complaint cannot be maintainable. It is further averred that the statutory notice does not contain the details of what amount borrowed by the petitioner.

3. Per contra, the learned counsel appearing for the respondent would submit that the respondent is a Proprietor of 'Shaleo Impex' and the account stands in the proprietor concerned and the respondent is the sole proprietor of 'Shaleo Impex'. Infact, the



petitioner clearly mentioned about the sum and as such the complaint is very much maintainable and the present petition is filed on false grounds. He prayed for dismissal of quash petition.

4. Heard Mr.Mr.G. Murugendran, learned counsel appearing for the petitioner and Mr. Ka. Ramakrishnan, learned counsel appearing for the respondent .

5. It is seen from the records that the petitioner is a sole accused on the complaint lodged by the respondent for the offence punishable under Section 138 of Negotiable Instruments Act. According to the respondent, the petitioner along with her husband borrowed a sum of Rs.11 lakhs and assured that the sum will be repaid with rate of interest 2% . Infact, they deposited original sale deed, dated 03.09.2010 with the respondent herein. They also executed a promissory note on 14.09.2014. After dishonoured the cheque, the respondent issued a legal notice and on receipt of the same, the petitioner issued reply notice. On perusal of the reply notice, the petitioner did not take any stand that the cheque was not issued to the respondent and the same was issued only to 'Shaleo Impex'. It is also seen that the petitioner took a stand with the alleged cheque was presented for collection with malafide intention to cheat and defraud the petitioner, whereas, now the present petition has been filed on the ground that the cheque was not issued in the name of 'Shaleo Impex'. When the cheque was issued in the name of the proprietor concerned and the proprietor can only file a complaint and therefore, the complaint filed by the proprietor of 'Shaleo Impex' is very much maintainable. Insofar as, other grounds raised by the petitioner herein are all mixed disputed question of facts and it cannot be decided under Section 482 of Cr.P.C. and this point can be considered only before the trial Court during trial. Therefore, this Court finds no merits in the petition and the same is liable to be dismissed.

6. In the result, the Petition stands dismissed. However, the trial Court is directed to complete the trial in C.C. No.254 of 2016, within a period of Six Months, from the date of receipt of a copy of the order. Consequently, connected miscellaneous petitions are closed.

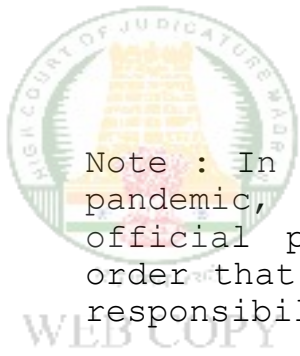
Sd/-

Assistant Registrar (Records)

// True Copy //

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Sub Assistant Registrar(CS)



Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Judicial Magistrate,
Fast Track Court (Magistrate Level),
Tuticorin.

Crl.O.P. (MD)No.22630 of 2016
05.11.2020

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