



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2021

CORAM

THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

CrI.O.P.No.12137 of 2016
and CrI.M.P.No.6227 of 2016

D.Valarmathi

...Petitioner/Accused

Vs.

M/s. Kotak Mahindra Bank,
No.1054, Ground Floor,
Gowtham Centre Annexe,
Avinashi Road,
Coimbatore - 641018.

Represented by its Power of
Attorney Holder Mr. Irfan Sherif

...Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the entire records relating to the complaint in S.T.C.No.179 of 2015 on the file of the Judicial Magistrate No.III, Coimbatore and quash the same.

For Petitioner .. Mr.L.Mouli

For Respondent .. Mr.Ramalingam Associates

ORDER

Heard Mr.L.Mouli, learned Counsel for the petitioner herein. The petitioner, is facing trial in S.T.C.No.179 of 2015, on the file of Judicial Magistrate No.III, Coimbatore. Said trial commenced on the basis of complaint given, primarily, alleging offences under Section 138 of Negotiable Instruments Act. Subsequently, owing to formation of Fast Track Court to trial Negotiable Instruments Act cases, S.T.C.No.179 of 2015 has been transferred to Fast Track Court/Judicial Magistrate No.I, Coimbatore and re-numbered as C.C.No.316 of 2016.

2. Mathura Traders, a proprietorship concern having office at 55/28, Salem Main Road, Namakkal, represented by its proprietor, K.K. Dhanraj, had obtained loan from the respondent herein/Kotak Mahindra Bank and an Over Draft facility aggregating to Rs.90,00,000/- had been given to Mathura Traders. The petitioner herein stood guarantee for repayment of the said loan. She had also issued a cheque for a sum of Rs.20,00,000/-



on 25.01.2016 bearing No.000002 drawn on Kotak Mahindra Bank, Namakkal. The said cheque, when presented for payment, was returned on the ground "Funds insufficient" by memo, dated 28.01.2016. After following due procedure, including issuance of advocate notice for which records produced before this Court do not reflect with the reply had been given, a complaint under Section 138 of N.I. Act had been laid before the Judicial Magistrate No.III, Coimbatore and taken cognizance as S.T.C.No.179 of 2015. The present petition is filed to quash the said S.T.C.No.179 of 2015, which as aforesaid had been re-numbered as C.C.No.316 of 2016, and is now pending before Fast Track Court/Judicial Magistrate No.I, Coimbatore.

3.Heard Mr.L.Mouli, learned Counsel for the petitioner and M/s.Ramalingam Associates, learned counsel for the respondent herein.

4.The learned counsel for the petitioner stated that the petitioner stood only as a guarantor. In the complaint, it has however been stated that the petitioner had actually approached the complainant bank for providing a term loan and loan was sanctioned and that towards discharge of the same, cheque was issued. These are facts to be examined and determined only during the course of trial. The witness / defacto complainant, can very well be cross-examined on all these aspects, whether the petitioner herein was only a guarantor and how it had been very specifically stated in the complaint that the petitioner herein had taken loan from the defacto complainant. That discrepancy over the status of petitioner can be pointed out during the course of cross examination and it is for the Judicial Magistrate, to appreciate the said evidence on the basis of facts and circumstances of the particular case and on analysis of evidence. Curtailing the progress of the case at the initial stage would not be proper and let me not express any opinion about the status of either the petitioner herein or on the said two statements as found in the advocate notice and as found in the complaint. They can be addressed by the Judicial Magistrate No.I, Coimbatore, on conclusion of the trial.

5.With the above observation, this Criminal Original Petition is dismissed, giving liberty to the petitioner to raise all legal issues, during the course of trial. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar



smv/grs

To

The Judicial Magistrate No.III,
Coimbatore.

+1cc to Mr.L.Mouli, Advocate, Sr.44844

Crl.O.P.No.12137 of 2016
and Crl.M.P.No.6227 of 2016

KV[co]
NSK 24/09/2021