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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.09.2021

PRONOUNCED ON : 30.09.2021

CORAM

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

Crl.O.P.No.11422 of 2015
and M.P.Nos.1 and 2 of 2015

R.Nandhini

.. Petitioner/Accused

Vs.

M/s.Prakash Textiles

Proprietor

M.K.Govindaraj Chettiar

.. Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records and quash the complaint in C.C.No.14 of 2015 before the District Munsif-cum-Magistrate at Mettupalayam, as against the petitioner.

For Petitioner .. Mr.V.T.Narendiran

For Respondent .. Mr.Rajendra Prasad

ORDER

The present petition has been filed taking advantage of Section 482 of Code of Criminal Procedure to quash further proceedings in C.C.No.14 of 2015, now pending on the file of the learned District Munsif-cum-Judicial Magistrate, Mettupalayam.

2. The respondent had supplied cotton to V.N.K. Textiles and Paper Mills Limited, wherein the brother of the petitioner is a Director. Owing to such business transactions, the brother of the present petitioner, in his capacity, as a Director of V.N.K. Textiles and Paper Mills Limited, had issued a cheque for Rs.33,19,607/- to the respondent herein. That cheque had been



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dishonoured, when presented for payment. The respondent had filed C.C.No.686 of 2012, which is pending before the learned Judicial Magistrate No.II, Pollachi against V.N.K. Textiles and Paper Mills Limited, represented by the brother of the petitioner herein, since he is a Director of the company.

3. It had been contended in the complaint, which is now pending as C.C.No.14 of 2015 before the learned District Munsif-cum-Judicial Magistrate at Mettupalayam, that the petitioner herein, towards part discharge of the loan amount of her brother, had issued a cheque for Rs.10,00,000/- to the respondent, which cheque had also been dishonoured, when presented for payment. Alleging that an offence under Section 138 of Negotiable Instruments Act is attracted, a complaint had been lodged, which had been taken cognizance and which Calendar Case is now sought to be quashed by the petitioner herein.

4. Heard arguments advanced by Mr.V.T.Narendiran, learned Counsel for the petitioner and Mr.Rajendra Prasad, learned Counsel for the respondent.

5. The fact that the respondent had initiated C.C.No.686 of 2012 towards dishonour of the cheque, issued by V.N.K. Textiles and Paper Mills Limited, for a sum of Rs.33,19,607/-, is not disputed by both the learned Counsels. It is contended that the petitioner herein had issued a cheque for Rs.10,00,000/- to the respondent towards part discharge of the said amount of Rs.33,19,607/-. However, it must also be mentioned that between the petitioner herein and the respondent, there was no direct contractual or business relationship or transaction necessitating issuance of a cheque of Rs.10,00,000/-.

6. As a matter of fact, the petitioner herein had not issued the cheque for Rs.10,00,000/- in her personal capacity, but, only as Correspondent/Secretary of V.N.Krishnaswamy Naidu College of Arts and Science for Women, Mettupalayam-641301.

7. It is seriously contended by Mr.V.T.Narendiran, learned Counsel for the petitioner that there was no legally enforceable debt, necessitating issuance of a cheque for Rs.10,00,000/- by the petitioner to the respondent, either by the petitioner in her personal capacity or the said college, as



an institution. The college has also not been shown as an accused. It is, therefore, contended that the entire proceedings is malafide and should be quashed.

WEB COPY 8. It is the contention of Mr. Rajendra Prasad, learned Counsel for the respondent, on the other hand, that substantial monies are due and payable to the respondent and as part settlement towards such dues, the petitioner had issued the cheque, which had been dishonoured when presented for payment.

9. Section 138 of Negotiable Instruments Act is as follows:-

"Dishonour of cheque for insufficiency, etc., of funds in the account - Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless____

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid;"

10. A reading of the said provision shows that a cheque must be drawn by a person on an account maintained by him with a



banker for payment of any amount of money to another person for the discharge of any debt or liability. This would, naturally, indicate that the person who draws the cheque and issues the cheque must have an existing debt or liability as against the person in whose favour the cheque is issued.

11. In the instant case, the petitioner had not issued the cheque from an account in her name. She had issued the cheque from the account in the name of V.N.Krishnaswamy Naidu College of Arts and Science for Women, Mettupalayam. That institution has not been made as a party. The constitution of said institution is not known, but, still the cheque had been instituted by the petitioner in her capacity as Correspondent/Secretary of that institution. She had not issued the cheque in her personal capacity.

12. It is not the case of the respondent that the petitioner has an existing personal debt as against the respondent. It is not the case of the respondent that the petitioner, to discharge a personal debt in her name, had issued the cheque. Even if she had a personal debt, the cheque, in question, was not issued from her account, but, rather from the account of V.N.Krishnaswamy Naidu College of Arts and Science for Women, Mettupalayam. It is also to be noted that the respondent had not supplied cotton either to the petitioner in her personal capacity or to the said V.N.Krishnaswamy Naidu College of Arts and Science for Women, Mettupalayam. The respondent had supplied cotton only to V.N.K.Textiles and Paper Mills Limited and which company had issued a cheque signed by its Director and for which, separate proceedings have been instituted, owing to the dishonour of that particular cheque.

13. The complaint had also not been lodged against the college, but, had been lodged against the petitioner in her personal capacity naming her as sole accused.

14. The facts just do not correlate.

15. The petitioner had not issued the cheque. She had signed the cheque only in her capacity as Correspondent/Secretary of a named college. The cheque had, obviously, been issued from the bank account of the said college. The said college had no transaction with the respondent.



16. Instituting a criminal complaint against the petitioner herein does, indeed, reflect a malafide intention on the part of the respondent. The complaint had been lodged by naming the petitioner as accused in her personal capacity, when she had not issued any cheque in her personal capacity. It is an arm twisting move to ensure that the amount mentioned in the cheque issued by V.N.K. Textiles and Paper Mills Limited is repaid to the respondent.

17. I hold that the complaint does not withstand judicial scrutiny viewed from any angle. The respondent can pursue his complaint against V.N.K. Textiles and Paper Mills Limited in manner known to law. But, the complaint alleged against the present petitioner will necessarily have to be interfered and quashed for the simple reason that the petitioner had not issued the cheque from her bank account for any loan which she had with the respondent. Moreover, the cheque had only been issued in her capacity as Correspondent/Secretary of the college from the bank account of the college and said institution had not been shown as accused. Viewed from any angle, the present petition has to be allowed and the criminal proceedings in C.C.No.14 of 2015, now pending on the file of the learned District Munsif-cum-Magistrate, Mettupalayam will necessarily have to be quashed.

18. With the above said observation, the present Criminal Original Petition is allowed. C.C.No.14 of 2015, pending on the file of the learned District Munsif-cum-Magistrate, Mettupalayam is quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

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Sub Assistant Registrar

grs



To

The District Munsif-cum-Magistrate,
Mettupalayam.

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+1CC to M/s.V.T.Narendiran, Advocate, SR.No. 51374

Cr1.O.P.No.11422 of 2015
and M.P.Nos.1 and 2 of 2015

PCH(CO)
B.VC (12/10/2021)