



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL.O.P.No.3854 of 2018  
and Crl.M.P.No.1787 of 2018

P.Jamuma

...Petitioner/Respondent

Versus

V.Ramasamy

...Respondent/Petitioner

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to S.T.C.No.373/2017 pending on the file of the learned Judicial Magistrate II, Cuddalore and quash the same as illegal and invalid.

For Petitioner : Ms.Geeta Ramaseshan

For Respondent : No appearance

O R D E R

The petitioner has filed this petition seeking to call for the records relating to S.T.C.No.373/2017, pending on the file of the learned Judicial Magistrate II, Cuddalore and quash the same as illegal and invalid.

2. The case of the prosecution is that the defacto complainant is the brother-in-law of the petitioner and her husband was acting as the power agent of her brother-in-law. The petitioner in order to purchase properties in her name and for her medical and personal expenditure, borrowed a sum of Rs.17,00,000/- from the defacto complainant and the said amount was transferred to the petitioner through bank transactions, based on an undertaking that she will repay the money within a period of one year. However, she failed to settle her dues. When it was questioned by the defacto complainant who is the brother of the petitioner's husband, he was dragged from pillar to post. Later, the petitioner has issued a cheque dated 15.05.2017,



bearing No.708284, drawn on Punjab National Bank, Bharathi Road, Cuddalore-1 for a sum of Rs.17,00,000/- in favour of the defacto complainant. When he presented the cheque in the Bank for clearance, it was dishonoured for the reason "'Funds Insufficient'". Consequently the defacto complainant had issued a legal notice to the petitioner on 16.07.2017 to repay the amount within a period of 15 days from the date of receipt of the said notice. However, she neither paid the money nor given any proper reply to the notice. Therefore, the defacto complainant has lodged a complaint in S.T.C.No.373/2017, on the file of the learned Judicial Magistrate II, Cuddalore.

3. The learned counsel appearing for the petitioner submitted that petitioner's husband was taking care of their financial transactions from the date of marriage, till the date of their separation. The petitioner was not aware of any of the business transactions done by her husband by using her account. She used to sign in blank cheques as the same was demanded by her husband. While so, the petitioner was shocked to receive summons in the above case, where a complaint has been filed against her under Section 138 A of the Negotiable Instruments Act. He further submitted that the husband of the petitioner has misused her signed cheques by colluding with his brother and therefore, there is no legally enforceable debt in favour of the defacto complainant and she has been wrongly foisted in this case with an oblique motive. While being so, the complaint against the petitioner is non-est in the eye of law and prays for quashment of the impugned proceedings in S.T.C.No.373/2017, on the file of the learned Judicial Magistrate II, Cuddalore.

4. In spite of service of notice as early as on 9.2.2018, till date there is no representation for the respondents. In such a backdrop, this Court is left with no other alternative but to adjudicate the issue on the basis of the materials available on record.

5. It is the case of the petitioner that her husband, who was taking care of her financial transactions, had misused the signed cheque to take revenge on her. It is the case of the petitioner that due to the cruelty meted out to her in her matrimonial home, she left the matrimonial home on 28.3.2017 whereinafter she had filed O.P. No.377/2017 to which the Principal had filed H.M.O.P. No.146 of 2017. The above facts are borne out by record.



WEB COPY

6. It is seen from the complaint that the cheque is alleged to have been issued on 15.5.2017, which was returned by the bank citing insufficient funds, whereinafter, the legal notice had been sent to the petitioner on 16.5.2017 to which reply is alleged to have been given on 29.5.17.

7. It is the case of the petitioner that her husband, who is acting as the power agent of his brother/respondent in this petition, has misused the blank signed cheques given by her after the petitioner had left her matrimonial home. It is the uncontroverted case of the petitioner that her financial affairs were looked after by her husband and that she was not aware of all the transactions and the issuance of cheques and that even her income tax returns were filed by her husband. In this backdrop, a perusal of the complaint reveals that the alleged amount of Rs.17,00,000/-, which is alleged to have been borrowed by the petitioner from her husband's brother, no details as to the manner in which the amount has been paid to the petitioner has been averred. Though it is the averment in the complaint that a sum of Rs.14,00,000/- was borrowed by the petitioner through banking channels, however, no material whatsoever finds place in the complaint to substantiate such a payment. In the above backdrop, the contention of the petitioner that there is contradiction in the amount alleged to have been received by the petitioner in the notice and in the complaint assumes significance.

8. Further, it is to be remembered that the petitioner and the Principal are husband and wife and it is only natural for the petitioner to have given blank signed cheques to her husband and further in the light of the matrimonial discord pleaded by the petitioner, this Court cannot brush aside the said stand of the petitioner that the cheque was misused by the Principal. Had really the Principal given the amount to the petitioner, definitely the Principal would have diligently prosecuted the petition before the trial court as well as before this Court. But the Principal has not thought it fit enough to come before this Court and contest the matter. In the absence of the Principal to come before this Court and establish his case, necessary inference has to be drawn in favour of the petitioner on the materials available before this Court.

9. For the reasons aforesaid, in the absence of the Principal appearing before this Court to substantiate his case and there being no tangible materials based on which the complaint given by the Principal could be made out, this Court is of the considered opinion that the initiation of the



complaint is only for the purpose of harassing the petitioner and cannot be said to be a pure case of cheque dishonour attracting Section 138 of the Negotiable Instruments Act.

WEB COPY

10. Accordingly, for the reasons aforesaid, this Criminal Original Petition is allowed and S.T.C.No.373/2017, pending on the file of the learned Judicial Magistrate II, Cuddalore, is quashed. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sk

To

The Judicial Magistrate-II,  
Cuddalore.

+1cc to M/s.Geeta Ramaseshan, Advocate Sr.32292

CRL.O.P.No.3854 of 2018

rp[co]  
srg 06/08/2021