



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.10895 of 2021

and

Crl.M.P.No.6458 of 2021

Sujaritha Suresh

...Petitioner

Versus

M/s.Shiksha Financial Services
India Private Limited
represented by its Deputy Manager -Legal
Mr.S.Suresh Kumar
No.16, Old No.34, J Block, 7th Street,
Anna Nagar East, Chennai 600 102.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the proceedings in STC.No.721/2019 pending on the file of the Judicial Magistrate FTC No.2, Poonamallee, quash the same.

For Petitioner : Mr.R.N.Amarnath

For Respondent : Mrs.R.Meenashi Devi
and Mr.A.S.Neela Narayanan

ORDER

This petition has been filed to call for the records relating to the proceedings in STC.No.721/2019 pending on the file of the Judicial Magistrate FTC No.2, Poonamallee and quash the same.

2. The petitioner/accused has filed this petition to quash the private complaint filed under Section 138 of the Negotiable Instruments Act in STC.No.721 of 2019.

3. The contention of the petitioner is that she is one of the Trustee of the Charitable Trust in the name and style of "Trinity Educational and Charitable Trust" and the said Trust also runs a School in the name of "Trinity International Residential School". The said Trust availed a loan of



Rs.10,00,000/- from the respondent. Like other Trustees, the petitioner also issued 3 cheques as security for the payment of the above amount on 19.07.2017. The petitioner is now being prosecuted for a cheque, which was given as security when the loan was obtained. Further, he contended that one Mr.Edwin A.Babu is the Managing Trustee of the Trust, and he availed the said loan and the petitioner was only a co-borrower and she issued the said cheques as security on the request of the Managing Trust. Further, she submitted that the petitioner is suffering from "Infiltrating Squamous Cell Carcinoma" and further she has got other health issues. The petitioner is residing at Tirunelveli and the case has been filed at Poonamallee, Chennai and her counsel is appearing before the Chennai Court. In an earlier occasion, she appeared before the Lower Court only with an aid and medical support. Further, the petitioner submitted that the Trust has been making payments. The cheques were issued on 19.07.2017 and the same is presented after three years from the date of issue and the petitioner has been falsely implicated in this case.

4. Mrs.R.Meenashi Devi, the learned counsel for the respondent/complainant has submitted that the petitioner has admitted that Trinity Educational and Charitable Trust has taken the loan from the respondent/complainant, which is a non banking financial company. The petitioner is the co-borrower, who had issued the cheques, admitting the liability of the Trust. However, now he has been making claim that the cheques have been issued as security and she had been falsely prosecuted. With regard to the health condition, the respondent has got no serious objection, since the petitioner was chief examined and the medical reports have been issued by the Christian Medical College, Neurology, Vellore. Further, the points raised by the petitioner are disputed and the same one factual in nature.

5. Considering above submissions, this Court finds that the points raised by the petitioner are factual and same is disputed by the respondent/complainant, which have to be decided only during trial.

6. Considering the medical condition of the petitioner and the medical report issued by the Christian Medical College, Neurology, Vellore, it is seen that the petitioner is facing serious health ailments, which is similar to the case of M/s.Bhaskar Industries Ltd Vs. M/s. Bhiwani Denim & Apparels Ltd., reported in (2001) 7 SCC 401, wherein, it has been reiterated that in 138 case whether the accused person, who is facing trial and had health ailments, the personal appearance of the petitioner is dispensed with. However, the petitioner shall appear before the Trial Court for enquiry proceedings as well as questioning under 313 Cr.P.C.



7. In view of the same, the personal appearance of the petitioner is dispensed with before the trial Court and the trial has to be proceed.

8. With the above direction, this Criminal Original Petition is disposed of. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

dna

To

1.The Judicial Magistrate FTC No.2,
Poonamallee.

2.The Public Prosecutor,
High Court,
Madras.

+1cc to Mr.A.Damodaran, Advocate, S.R.No.29590

+1cc to Mr.R.N.Amarnath, Advocate, S.R.No.29509

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and
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PMK(CO)
RGA(02/08/2021)