



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 08.07.2021

CORAM:

WEB COPY

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.Nos.11655 of 2021 and Crl.M.P.No.6698 of 2021
and
Crl.O.P.No.11668 of 2021 and Crl.M.P.No.6702 of 2021

Jayasri

... Petitioner in both cases

Versus

C.Arulkumar
R.Theethumalai

... Respondent in CRL OP 11655/2021
... Respondent in CRL OP 11668/2021

PRAYER in Crl.O.P.No.11655 of 2021: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to modify the conditional order of "petitioner/accused shall pay a sum of Rs.50,000/- (Rupees fifty thousand only) paid to the complainant on or before 23.04.2021 otherwise this petition will be dismissed" which was imposed in C.M.P.No.1529/2021 in S.T.C.No.4/2016 dated 15.04.2021 by the learned Judicial Magistrate, Pappireddipatty.

PRAYER in Crl.O.P.No.11668 of 2021: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to modify the conditional order of "petitioner/accused shall pay a sum of Rs.50,000/- (Rupees fifty thousand only) paid to the complainant on or before 23.04.2021 otherwise this petition will be dismissed" which was imposed in C.M.P.No.1527/2021 in S.T.C.No.3/2016 dated 15.04.2021 by the learned Judicial Magistrate, Pappireddipatty.

For Petitioner : Mr.B.Sundarapandian
in Both cases

COMMON ORDER

Criminal Original Petitions have been filed to modify the orders dated 23.04.2021, in C.M.P.Nos.1527 & 1529 of 2021 in S.T.C.Nos.3 & 4 of 2016 passed by the learned Judicial Magistrate, Pappireddipatty.

2.The petitioner is the accused and the respondent is the complainant in S.T.C.Nos.3 & 4 of 2016. In the complaints, it is alleged that the petitioner and the respondent were employed as Teachers in E.R.K Higher Secondary School and they know each



other. The petitioner borrowed a short term loan of Rs.2,00,000/- and Rs.5,00,000/- from the respondent, for which the petitioner handed over two cheques in dispute. When the cheques presented for encashment, it was returned for the reason that 'Signature Differs'. Due to which, the respondent issued a statutory notice to the petitioner, but no reply or explanation from her. Hence, the complaints were lodged by the respondent before the learned Judicial Magistrate, Pappireddypatty. The petitioner's estranged husband Vijay Anand had misused the petitioner's cheque, signed the same and handed over to several persons. Due to the matrimonial dispute, the petitioner filed a divorce petition in H.M.O.P.No.7 of 2015 before the learned Judge, Family Court Dharmapuri and the divorce was granted on 12.05.2016. The case under Section 138 of the Negotiable Instruments Act, 1881 cannot be proceeded against the accused in a case of return of cheque for difference in signature. Hence, the petitioner filed a Quash Petitions before this Court in CrI.O.P.Nos.924 & 1460 of 2017 and this Court was pleased to admit the same and granted stay. On 02.02.2021, the Quash Petitions were taken up for hearing and this Court finding that the contentions raised by the petitioner are to be decided during the trial, dismissed the petitions and dispensed with presence of the petitioner before the trial Court and directed the petitioner to cross examine the witnesses and be present at the time of questioning under Section 313 Cr.P.C., and at the time of passing judgment. On 30.03.2021, the petitioner's counsel failed to appear on behalf of her before the trial Court and the petitioner also not appeared, since she was given exemption from appearance by this Court. Due to non appearance on the side of the petitioner, the trial Court issued NBW against her. Immediately on coming to know about it, the petitioner surrendered before the trial Court filed the recall petitions in C.M.P.Nos.1527 & 1529 of 2021 in S.T.C.Nos.3 & 4 of 2016 on 15.04.2021. The trial Court, by order, dated 23.04.2021, recalled the NBW with the condition that the petitioner to pay a sum of Rs.50,000/- to the respondent/complainant on or before 23.04.2021.

3.The contention of the petitioner is that the cheques in both the cases are Rs.2 lakhs and Rs.5 lakhs respectively. The petitioner has got no legally enforceable debt to be discharged to the respondent. Her main contention is that her cheques were misused and signed by her estranged husband Vijay Anand. On the face of it, the signatures found in the cheques are not of the petitioner. On 30.03.2021, the respondent was only present, other than that the respondent has not taken steps to file his proof affidavit or he was not examined himself in chief and no situation arouse that due to the absence of the petitioner and her counsel, the trial was stalled, it was only a regular formal calling. Hence, the trial Court ought not to have imposed such



an onerous condition. Making payment of Rs.50,000/- in each cases would amount to admitting the guilt very much against the defence taken by the petitioner and it would cut the root of the defence case and cause great prejudice. Hence, he prayed for modifying the condition.

4.This Court considered the rival submissions and perused the materials available on record.

5.From the cheques produced, it is seen that the cheques were signed by her estranged husband. Earlier, the petitioner got divorce from her estranged husband and now, she is living separately. The cheques have been returned for the reason 'Signature Difference'. After receipt of summons from the trial Court, the petitioner approached this Court by way of filing petitions under Section 482 Cr.P.C. This Court admitted the Quash Petitions and granted stay and the Quash Petitions dismissed recently on 02.02.2021. Thereafter, within two months on 30.03.2021, NBW was issued. It is seen that the order copy of the Quash Petitions made available only during the month of April 2021. The trial Court without considering these aspects, had imposed a cost of Rs.50,000/- for recalling NBW, which is onerous and not proper. As rightly contended by the petitioner, if the amount of Rs.50,000/- is paid in each cases, it would amount to admitting the guilt of the petitioner and it would also cause great prejudice during trial. Further, on the hearing date of 30.03.2021, it was a formal hearing, due to absence of petitioner and her counsel, trial was not stalled.

6.For the aforesaid reasons, this Court set asides the orders dated 23.04.2021, in C.M.P.Nos.1527 & 1529 of 2021 in S.T.C.Nos.3 & 4 of 2016 passed by the learned Judicial Magistrate, Pappireddipatty. Accordingly, these Criminal Original Petitions are allowed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate Court,
Pappireddypatti.

2. -do- The Chief Judicial Magistrage,
Dharmapuri.

CRL.O.P.Nos.11655 & 11668 of 2021

PCH(CO)

B.VC(06.08.2021)