



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2021

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRL. O.P. NO.7924 OF 2017

&

CRL.M.P.NOS.5732 & 5733 OF 2017

S.Anandan
S/o. N.Saravanan

... Petitioner/Accused

Versus

R.Jaya
W/p.Chandrasekar Rao,
represented by her poweragent N.Chandrasekar Rao,
Chennai-4.

... Respondent/Complainant

PRAYER :

Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the entire records in respect of the complaint filed by the respondents before the 13th Metropolitan Magistrate, Egmore in C.C.No.7274 of 2016 now pending before the Fast Track Court No.1, Magistrate Level, Egmore and quash the same.

For Petitioner ... Mr.D.Rajagopal

For Respondent ... Mr.M.Govindaraju

O R D E R

This Criminal original Petition has been filed to quash the final report in C.C. 7274 of 2016 filed against the petitioner for the offence under Section 138 of Negotiable Instruments Act before the Fast Track Court No.1, Magistrate Level, Egmore.

2. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent.



3. It is the case of the de facto complainant that the accused borrowed a sum of Rs.13,00,000/- in the year 2014 and issued cheques, however, when the same were presented for encashment, the same were dishonoured for insufficient funds. After following the statutory procedure, the present complaint has been filed, which is sought to be quashed by the petitioner herein mainly on the ground that as the petitioner has already paid the amount, there is no legally enforceable debt.

4. It is submitted by learned counsel for petitioner that the petitioner has also issued a legal notice in this regard and also filed a suit for mandatory injunction. In a nutshell, it is the contention of the learned counsel for the petitioner that there is no legally enforceable debt and also the amount borrowed by the petitioner has already been repaid.

5. At the outset, I am unable to countenance the submission of learned counsel for petitioner. In fact, whether or not there is any legally enforceable debt is a matter of evidence and rule of special presumption contemplated under Sections 139 and 118 of the Negotiable Instruments Act has to be dislodged by the drawer of the cheque. Therefore, merely on the basis of such submission and some complaint said to have been given, this Court cannot assume the role of trial Court to appreciate the evidence. In such view of the matter, I do not find any merit in the present petition and the same is liable to be dismissed.

6. Accordingly, the present Criminal Original Petition is dismissed. However, the trial Court is directed to dispose of C.C. 7274 of 2016, within a period of six months from the date of receipt of a copy of this order. Personal appearance of the petitioner is dispensed with except for receiving copies and answering charges and 313 questioning or any other date that may be fixed by the trial Court. The petitioner shall file an application before trial Court under Section 436 Cr.P.C and execute a bond for Rs.10,000/- with two sureties each. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gpa



To

1. Fast Track Court No.1,
Magistrate Level, Egmore.

2. The Public Prosecutor
Madras High Court
Chennai.

+lcc to Mr.M.Govindaraju, Advocate, S.R.No.65394

Cr1. O.P. No.7924 of 2017
&
Cr1.M.P.Nos.5732 & 5733 of 2017

PM(CO)
PM/27/12/2021