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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2021

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRL. O.P. NO. 11878 OF 2017

AND

CRL.M.P.NOS.7785 AND 7786 OF 2017

Mrs.A.N.Solai

...Petitioner / Accused

Versus

S.R.Manikandan

...Respondent / Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records and quash the complaint in C.C.No.200 of 2015 on the file of the Judicial Magistrate No.II, F.T.C at Magisterial Level, Coimbatore.

For Petitioner : Mr.S.Shankar

O R D E R

This Criminal Original Petition has been filed to quash the complaint in C.C.No.200 of 2015 on the file of the Judicial Magistrate No.II. F.T.C at Magisterial Level, Coimbatore.

2. The case of the defacto complainant is that the accused has borrowed a sum of Rs.4,00,000/- and issued a cheque dated 27.11.2014 drawn on Indian Overseas Bank, Big Bazar Street, Coimbatore towards the above debt. When the cheque was presented for encashment, the same was dishonoured for the reason "insufficient funds". After complying the statutory notice, the defacto complainant has filed the complaint.

3.Learned counsel for the petitioner submitted that the main ground on which the quashment of proceedings is sought for before this Court is that there is no legally enforceable debt and there is no privity of contract between the parties. Moreover, the petitioner has not issued a cheque as stated in the complaint because the cheque is non MICR cheque which was not in use in the year 2014, the same clearly indicates that the cheque was not issued by the petitioner. Hence, prayed to quash the proceedings.



4. Having gone through the materials available on record, this Court is of the considered view that when a complaint is filed under Section 138 of the Negotiable Instruments Act, this Court cannot go into the question of fact as to the validity of the issuance of cheque and whether the cheque has been issued towards a legally enforceable debt or not. Those issues are factual and triable issues, which have to be decided only by way of a full fledged trial and not otherwise under Section 482 of Code of Criminal Procedure. The above view of this Court is fortified by the decision of the Hon'ble Supreme Court in STATE OF HARYANA AND OTHERS Vs. BHAJANLAL AND OTHERS 1992 Supp (1) Supreme Court Cases 335, wherein the Hon'ble Supreme Court has held that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection.

5. In such a view of the matter, this Court is of the view that quashing of the case cannot be considered, at this point of time. Accordingly, this Criminal Original Petition is dismissed with a direction to the Court below to complete the proceedings in C.C.No.200 of 2015 on the file of the Judicial Magistrate No.II. F.T.C at Magisterial Level, Coimbatore within a period of four months from the date of receipt of a copy of this order. It is for the petitioner to take all her defence before the trial Court. The accused is directed to appear before the trial Court within two weeks from the date of receipt of a copy of this order and file an application under Section 436 of Code of Criminal Procedure. On such filing of the application, trial Court is directed to release the petitioner on bail on the same day on executing a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) each with two sureties. If thereafter, she absconds, a fresh FIR can be registered under Section 229 A of the Indian Penal Code. Consequently, connected Criminal Miscellaneous Petitions are closed.

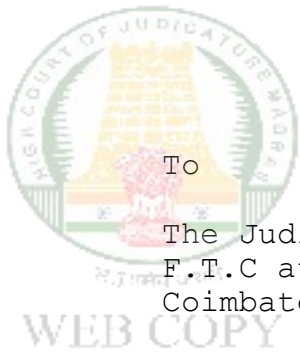
6. The learned counsel for the petitioner requested this Court to dispense with the presence of the petitioner. Taking into consideration, the facts and circumstances of the case, the presence of the petitioner before the Trial Court is dispensed with except for receipt of copies, answering the charges, questioning under Section 313 Cr.P.C., or on any other date as may be required by the trial Court. She shall be represented by a counsel, who shall cross examine the witnesses on the same day, when they are examined in Chief.

Sd/-
Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

msv



To

The Judicial Magistrate No.II.
F.T.C at Magisterial Level,
Coimbatore.

CrI. O.P. No. 11878 of 2017
and CrI.M.P.Nos.7785 and 7786 of 2017

SVI (CO)
RVM(16/12/2021)