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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2022

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THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.O.P.NO.26450 OF 2016
CRL.M.P.NOS.13212 & 13213 OF 2016

1. G.Jamuna
2. G.Leela

... Petitioners

Vs.

A.Subramanian

... Respondent

Prayer :- Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure, to call for the records in CC No.370 of 2016 on the file of the learned Judicial Magistrate, Mettupalayam, Coimbatore District and quash the proceedings.

For Petitioners	:	M/s.T.Shanmugam
For Respondent	:	Mr.S.Mukunth for M/s.Sarvabhauman Associates

ORDER

This petition is filed to call for the records in CC No.370 of 2016 on the file of the learned Judicial Magistrate, Mettupalayam, Coimbatore District and quash the same.

2.C.C.No.370 of 2016 came to be filed under Sections 138 and 142 of the Negotiable Instruments Act. The allegations made in the complaint, in brief, are as follows:

The respondent is a complainant filed this case against the petitioners/accused before the Trial Court. It is alleged that on 05.01.2015, petitioners borrowed a sum of Rs.6,00,000/- from the respondent. They had executed a joint promissory note for



the said amount, agreed to repay the same with interest. Thereafter, inspite of repeated demands, petitioners have not paid the amount either towards principal or interest. On 14.07.2015, petitioners issued a cheque bearing No.612391 dated 15.07.2015 signed by the first petitioner drawn in favour of the respondent for a sum of Rs.6,00,000/- on Canara Bank, Mettupalayam Branch, towards the principal amount of the loan. As such, respondent presented the said cheque for collection on 15.07.2015 through Syndicate bank, Mettupalayam Branch, it was returned on 21.07.2015, with the reason "Funds Insufficient". Petitioners knowingly that the cheque would be dishonoured for want of funds, issued the cheque and thus committed the offence punishable under Sections 138 and 142 of the Negotiable Instruments Act. A legal notice dated 27.07.2015 was issued to the petitioners and that was received by them on 28.07.2015. Reply was given on 05.08.2015 with false and untenable allegations. Petitioners have not paid amount, therefore, the complaint.

3.The learned counsel for the petitioners submitted that petitioners are total strangers to the respondent. They neither borrowed money from the respondent or issued any cheque for discharging the alleged borrowal of money. In fact, petitioners had sent a reply through legal notice on 05.08.2015 and explained their position. It is the specific case in the reply that respondent is total stranger to the petitioners. The impugned cheque along with promissory note and another cheque were handed over to Muthu Finance in the year 2013, in connection with chit transaction. It is not known how the respondent came to possess the cheque and promissory note. Since, criminal case is pending against Muthu Finance, it appears that they have opted to file this case through respondent using him as a benami. It is also submitted by the learned counsel for the petitioners that the cheque was signed by only first petitioner, but the case is instituted against both the petitioners which is impermissible in law. There is no legally enforceable debt or liability due from petitioners to the respondent and thus, the criminal case against the petitioners has to be quashed.

4.In response, learned counsel for the respondent submitted that whatever the contentions made by the learned counsel for the petitioners are on factual aspects and the rival contentions of the parties should be put to trial. There is prima-facie material produced before this Court that a cheque was issued for discharging a legally enforceable debt and that was dishonoured. It is enough to prosecute the petitioners for the offence under



Sections 138 and 142 of the Negotiable Instruments Act. Therefore, he prayed for dismissal of this petition.

5. Considered rival submissions and perused the records.

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6. As indicated above, it is the claim of the respondent that petitioners borrowed a sum of Rs.6,00,000/- on 05.01.2015, executed promissory note and then issued a cheque for discharging the loan amount. When it was presented for collection, it was dishonoured for want of funds. This is challenged by the petitioners and it is claimed that respondent is stranger to the petitioners and promissory note and cheque given to Muthu Finance in connection with chit transaction are used for filing this case. As rightly pointed out by the learned counsel for the respondent, these are disputed facts and disputed facts have to be enquired, and adjudicated only in the trial. However, this Court finds that as submitted by the learned counsel for the petitioners that when a cheque was issued by the first petitioner alone, filing of the case against both the petitioners is impermissible in law. Thus, this Court quashes the complaint in CC No.370 of 2016 against the second petitioner. However, as stated above, the disputed facts regarding the borrowal of money and issuance of cheque have to be tried by the trial Court by examining concerned witnesses and by perusing concerned documents.

7. In this view of the matter, the Criminal Original petition for quashing the complaint in CC No.370 of 2016 against the second petitioner is allowed. So far as, first petitioner is concerned, petition for quashing the complaint in CC No.370 of 2016 is dismissed. The trial Court is directed to dispose the case in CC No.370 of 2016 as early as possible. This being cheque dishonour case and the petitioner is a woman, it is directed that learned trial Judge is not to insist on the personal appearance of the first petitioner on every hearing. Petitioner may give special vakalath to her counsel to facilitate him to represent on behalf of her on the dates of hearing without fail. The learned trial Judge may insist the appearance of the petitioner as and when required.

8. Criminal Original Petition in CrI.O.P.No.26450 of 2016 against first petitioner is dismissed. Criminal Original Petition in CrI.O.P.No.26450 of 2016 against second petitioner is allowed. Accordingly, complaint against second petitioner in CC No.370 of 2016 on the file of the learned Judicial Magistrate, Mettupalayam, Coimbatore District is quashed. In fine, Criminal Original Petition in CrI.O.P.No.26450 of 2016 is



partly allowed. Consequently, connected miscellaneous petitions stand closed.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Mettupalayam,
Coimbatore District .
2. The Public Prosecutor
High Court of Madras.

+lcc to M/s.Sarvabhauman Associates, Advocate, S.R.No.21422

CRL.O.P.No.26450 of 2016
Crl.M.P.Nos.13212 & 13213 of 2016

PMK(CO)
RLP(19/04/2022)