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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.04.2022

PRONOUNCED ON : 17.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Original Petition No.3910 of 2019  
and  
Crl.M.P.No.2426 of 2019

M.Subashini

... Petitioner/Accused

Vs

S.Prabhu

... Respondent/Complainant

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, seeking to call for the records pertaining to the case in S.T.C.No.235 of 2018 pending on the file of the learned Judicial Magistrate (Fast Track) Court, Tiruchengode, quash the same by allowing this quash petition.

For Petitioner : Mr.N.Manoharan

For Respondent : Mr.C.S.Saravanan

ORDER

This Criminal Original Petition had been filed to quash the proceedings in S.T.C.No.235 of 2018 pending on the file of the learned Judicial Magistrate (Fast Track) Court, Tiruchengode.

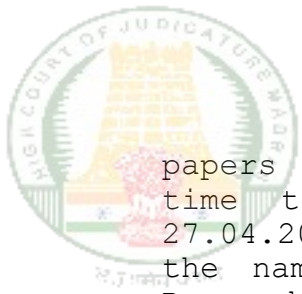
2.The learned Counsel for the Petitioner submitted his arguments. As per his submission, the Petitioner is facing the complaint before the learned Judicial Magistrate, Fast Track Court, Tiruchengode, for the alleged offences under Section 138 of Negotiable Instruments Act instituted by the Respondent. The Respondent is a stranger to the Petitioner. There had been a matrimonial dispute between the Petitioner and her husband. Therefore, the Petitioner is living separately with her parents along with her children. She came to know that summons were



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served from the Court of the learned Judicial Magistrate, Tiruchengode to her mother-in-law. The property documents of the house of the Petitioner's husband are in the custody of the Respondent herein. It is the further submission of the learned Counsel for the Petitioner that the husband of the Petitioner was running a duty paid shop in Tiruchengode. He had borrowed money from several individuals including the Respondent. Since he had suffered loss in his business, he has filed Insolvency Petition in I.P.No.1 of 2018 on the file of the learned Vacation Judge, Namakkal and it was transferred to the Court of the learned Subordinate Judge, Tiruchengode and renumbered as I.P.No.2 of 2018. In the said Insolvency Petition, the Petitioner's husband has disclosed his liability of Rs.5,00,000/- (Rupees Five Lakhs only) payable to the Respondent herein. The Respondent herein was impleaded as Respondent No.22 in I.P.No.2 of 2018 on the file of the learned Subordinate Judge, Tiruchengode. The activities of the husband of the Petitioner had resulted in matrimonial dispute between the Petitioner and her husband. Therefore, she had left the matrimonial home and she has been living with her parents for the past 2½ years. She found out that her cheque book containing Cheque Nos.00001 to 000025 relating to her SB Account No.0726301000095491 was missing. Therefore, she had addressed a letter to the Bank Manager to stop payment relating to the missing cheques. Subsequently, the Respondent herein contacted her on phone. She had stated that her husband had been living separately and he had filed I.P.No.2 of 2018 on the file of the Subordinate Judge, Tiruchengode wherein the Respondent is shown as Respondent No.22 and his liability of loan towards the Respondent is shown as Rs.5,00,000/- (Rupees Five Lakhs Only). She had stoutly refused the claim of the Respondent as though she had issued cheque. She had stated in detail regarding the missing of cheques and her action in informing the Bank for "stop payment". She had also issued a public notice warning people of misusing her cheques and filing complaint under Section 138 of Negotiable Instruments Act. Also she had approached the Superintendent of Police, Namakkal District regarding missing of cheques. Under those conditions, the learned Counsel for the Petitioner's submissions that the filing of the private complaint by the Respondent by filling it up with a date prior to the date of complaint preferred by the Petitioner and prior to the date of publication of notice. Therefore, the Petitioner seeks to quash the complaint in S.T.C.No.235 of 2018 on the file of the learned Judicial Magistrate, Fast Track Court, Tiruchengode.

3.The learned Counsel for the Respondent did not reply to the arguments. Therefore, the case was adjourned to 13.04.2022 from 07.04.2022. On 13.04.2022, the learned Counsel for the Respondent submitted that he had received the typed set of



papers from the learned Counsel for the Petitioner and sought time to argue and on his request, it was adjourned to 27.04.2022. On 27.04.2022 when the case came up for hearing, the name of the Respondent and the learned Counsel for the Respondent also printed in the cause list. However, there was no representation on behalf of the Respondent. Therefore, this Court had directed the Registry to post this case on 28.04.2022 under the caption 'Reserved for Orders'. Till 29.04.2022, the learned Counsel for the Respondent neither appeared nor furnished written arguments objecting the arguments of the learned Counsel for the Petitioner seeking to quash the Criminal Complaint.

4. On perusal of the complaint and the typed set of papers filed along with this Petition, it is found that the Insolvency Petition and the copy of the public notice also enclosed in the typed set of papers. The Petitioner had also replied to the statutory notice given by the Respondent denying her liability and also denying the issuance of cheque by her. She had clearly mentioned the pendency of the Insolvency Petition. The complaint preferred by her with the Superintendent of Police, Namakkal and also the public notice issued by her through local newspaper. In spite of her reply notice to the statutory notice, the filing of the complaint by the Respondent is found to be without any legal basis regarding the prior debt. The Petitioner in her reply had clearly stated that the Respondent is a stranger to her. Therefore, she suspected her estranged husband in colluding with the Respondent to extract money from her. Under those circumstances, as observed by the Hon'ble Supreme Court in the Case of State of Haryana -vs- Bhajan Lal reported in 1992 Suppl.(1) SCC 335, this is nothing but an abuse of process of Court. If this Petition is dismissed, the Petitioner, as Accused, has to face the course of a trial which is nothing but a harassment and abuse of process of Court, particularly, when the Petitioner's husband had already filed an Insolvency Petition wherein the Respondent is shown as Respondent No.22 pending on the file of the learned Subordinate Judge, Tiruchengode.

5. Apart from all those things, the non-cooperation of the learned Counsel for the Respondent/Complainant in arguing this case before this Court in spite of opportunities given to him and in spite of the fact that the Court had proceeded the case and listed it on 27.04.2022 and 28.04.2022 with the caption 'Reserved for orders' thereby directing the learned Counsel for the Respondent to argue or furnish written arguments, he had not done so. That gives a presumption that the Respondent does not want to argue this case as though this Petition and typed set of papers were clearly stated that what are all available to the Petitioner is to be considered by the trial Court regarding the



complaint. When the Petitioner is estranged from her husband and not living with him and missing of cheque book had been duly reported by the Petitioner with the bank requesting 'stop payment', misusing of those cheque leaves and filing the complaint by the Respondent under Section 138 of the Negotiable Instruments Act is nothing but harassing the Petitioner for extracting money by any means. When the Petitioner is totally stranger to her husband and there was no prior liability between her and her husband, the Court can draw adverse inference from the conduct of the Respondent/Complainant before the learned Judicial Magistrate, Tiruchengode that misusing the cheque leaves and filing complaint against the wife, for the conduct of the husband amounts to harassment on the Petitioner which is to be considered as abuse of process of law.

6. In the result, this Criminal Original Petition is allowed.

Accordingly, the Criminal Case in S.T.C. No.235 of 2018 on the file of the learned Judicial Magistrate, Fast Track Court, Tiruchengode is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

SRM

To:

1. The Judicial Magistrate,  
Fast Track Court,  
Tiruchengode.
2. Do-Through,  
The Chief Judicial Magistrate,  
Namakkal.

+1cc to Mr.N.Manoharan, Advocate, S.R.No.37108

Cr1.O.P.No.3910 of 2019

SKM(CO)  
UMA(08/07/2022)