



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.01.2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No.6985 of 2018
and Crl.M.P.Nos.3611&3612 of 2018

D.Valarmathi

...Petitioner /Accused

Versus

M/s.Kotak Mahindra Bank,
No.1054, ground Floor,
Gowtham Centre Annexe,
Avinashi Road,
Coimbatore-641 018.

Represented by its Power of
Attorney Holder Mr.Irfan Sheriff

...Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to the complaint in C.C.No.1227 of 2017 on the file of the Hon'ble Judicial Magistrate-II, Fast track Court at Magisterial Level, Coimbatore and quash the same.

For Petitioner : M/s.L.Mouli

For Respondent : No appearance

O R D E R

This Criminal Original Petition has been filed to call for the records relating to the complaint in C.C.No.1227 of 2017 on the file of the Hon'ble Judicial Magistrate-II, Fast track Court at Magisterial Level, Coimbatore and quash the same.

2. Mathura Traders, a proprietorship concern represented by its proprietor, K.K. Dhanraj, had obtained loan from the respondent herein/Kotak Mahindra Bank and an Over Draft facility aggregating to Rs.90,00,000/- had been given to Mathura Traders.



The petitioner herein stood as guarantor for repayment of the said loan. She had also issued a cheque for a sum of Rs.20,00,000/- on 09.01.2017 bearing No.000003 drawn on Kotak Mahindra Bank, Namakkal. The said cheque, when presented for payment, was returned on the ground "Funds insufficient" by memo, dated 10.01.2017. After following due procedure, including issuance of advocate notice for which records produced before this Court do not reflect with the reply had been given, a complaint under Section 138 of N.I. Act had been laid before the Judicial Magistrate No.III, Coimbatore and taken cognizance as C.C.No. 1227 of 2017. The present petition is filed to quash the said C.C.No. 1227 of 2017 on the file of the Judicial Magistrate No.II, Fast Track Court at Magisterial Level, Coimbatore.

3.Heard Mr.L.Mouli, learned Counsel for the petitioner and there is no representation for the respondent.

4.The learned counsel for the petitioner stated that the petitioner stood only as a guarantor. In the complaint, it has however been stated that the petitioner had actually approached the complainant bank for providing a term loan and loan was sanctioned and that towards discharge of the same, cheque was issued. These are facts to be examined and determined only during the course of trial. That discrepancy over the status of petitioner can be pointed out during the course of cross examination and it is for the Judicial Magistrate, to appreciate the said evidence on the basis of facts and circumstances of the particular case and on analysis of evidence. Curtailing the progress of the case at the initial stage would not be proper. Admittedly, the cheque has been issued. In such view of the matter, it is for him to rebut the legal presumption.

5. With the above observation, this Criminal Original Petition is dismissed, giving liberty to the petitioner to raise all legal issues, during the course of trial. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

msv/nr



To

The Judicial Magistrate-II,
Fast track Court at Magisterial Level,
Coimbatore.

+1cc to Mr.L.Mouli, Advocate SR.No.1514

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SRA(CO)
CB(31/01/2022)