IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.5947 of 2021 and Crl.M.P.Nos.3836, 3837 & 13415 of 2021
and
Crl.O.P.No.6734 of 2021 and Crl.M.P.Nos.4474 & 4475 of 2021 and
Crl.O.P.No.6768 of 2021 and Crl.M.P.Nos.4489 & 4490 of 2021

T.Shakila ... Petitioner in all cases

Versus

Y.Nazar ... Respondent in all cases

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to call for the records of the proceedings in S.T.C.Nos.47, 49 & 50 of 2020 respectively, on the file of the Judicial Magistrate, Fast Track Court, Magistrate Level, Dharmapuri and to quash the same as a gross abuse of process.

In all cases:
For Petitioner : Mr.Sharath Chandran

For Respondent : Mr.D.Ramesh Kumar

COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings in S.T.C.Nos.47, 49 and 50 of 2020, on the file of the Judicial Magistrate, Fast Track Court, Magistrate Level, Dharmapuri/trial Court.

2.Since the petitioner and the respondent are one and same and the relief sought for are similar in all these petitions, this Court decides to dispose all the petitions, by way of common order.

3.The gist of the case is that the respondent/complainant was running a financial institution with requisite license issued by the Government. The petitioner and her husband are running beauty parlor in the name of Natural Beauty Parlour at various places in Dharmapuri. For their business needs, during the last week of October 2019, they had approached the respondent for a loan of Rs.96 lakhs. Believing the petitioner and her husband, the respondent agreed to give money and asked them to come during the first week of November 2019. On 07.11.2019, the petitioner and her husband had gone to the respondent's institution and received the loan amount of Rs.96 lakhs and handed over eight HDFC bank cheques and gave an undertaking that the cheques can be deposited after 365 days and they had also executed loan documents. It is further averred in the complaint that on 29.01.2020, again the respondent was requested to give further amount of Rs.5 lakhs as additional loan. The respondent gave the said amount and the petitioner gave ten cheques to the respondent. When those cheques were presented in IDBI bank on 18.03.2020, the same were returned on 24.03.2020 with an endorsement 'Payment Stopped by Drawer'. The respondent issued a legal notice to the petitioner on 28.04.2020, for which, the petitioner sent a reply denying the liability. Hence, the respondent filed the above complaints before the trial Court.

4.The learned counsel for the petitioner submitted that the petitioner is an Advocate, who is practicing in the Courts of Dharmapuri. The respondent is doing money lending business and conducting Kangaroo Court in support of muscle men. He further submitted that in S.T.C.No.47 of 2020, the cheques were handed over while availing loan from the respondent on 07.11.2019, in S.T.C.No.49 of 2020, 12 cheques were handed over and in S.T.C.No.50 of 2020, 8 cheques were handed over. Likewise, on 29.01.2020, ten cheques were handed over by the petitioner in all the three cases. The case of the respondent clearly shows that the respondent forcibly obtained cheques from the petitioner and misused the same. Earlier to the occurrence, the petitioner's father-in-law lodged a complaint to the Superintendent of Police, Dharmapuri complainant extortion of cheques from the petitioner. Followed by it, legal notices, dated 19.03.2020 and 20.03.2020 were issued to the respondent, wherein the details of cheques and how it has been extorted from the petitioner are explained in detail. In the reply sent by the respondent on 17.04.2020, he did not give proper answer to the notice issued, but gave different version. Again, another notice issued to the respondent on 29.04.2020, but no reply was given.

5.He further submitted that an FIR in crime No.7 of 2020 has been registered against the respondent on 30.07.2020, for offence under Sections 342, 506(i) IPC and Section 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. Further, the respondent snatched gold jewels from the petitioner and also her son's bullet bike bearing registration No.TN 29 BF 7777. From the facts of the above cases, it is seen that the cheques were not given for discharge of any liability as claimed by the respondent, which were extorted by him threatening the petitioner, her husband and father-in-law. Hence, the above cases would clearly fall under the parameter No.7 in the case of "State of Haryana Versus Bhajan Lal reported in 1992 Supp 1 SCC 335" that the complaints are maliciously instituted with an ulterior motive.

6.The learned counsel for the respondent submitted that the points raised by the petitioner are disputed. After dishonour of the cheques, the respondent sent a legal notice to the petitioner. The respondent is running a financial institution with requisite license from the Government. The petitioner along with her husband approached the respondent and took loan by executing documents. Thereafter, taking advantage of her position as Advocate, concocted a story and her husband and father-in-law created a drama before the Collectorate office by drowsing with kerosene on their own and attempted to set fire and reported the incident in newspapers. Thus, the drama has been enacted in order to escape from the criminal proceedings initiated by the respondent. Therefore, the points raised by the petitioner are factual and it has to be decided only during trial, hence, prayed for dismissal of these quash petitions.

7.This Court considered the rival submissions and perused the materials available on record.

8.It is seen that there have been complaints and counter complaints, which have been registered against the petitioner and the respondent. Before presentation of cheques, there have been exchange of notice between the petitioner and the respondent. Both the petitioner and the respondent have recorded their respective stand and defence in the case, which are all factual in nature. All documents pertaining to these cases are already available with them, which have to be considered in the manner known to law during trial and not in these Quash Petitions.

9.Hence, this Court is not inclined to quash the proceedings and entertain these Criminal Original Petitions. At this stage, the learned counsel for the petitioner seeks permission of this Court to withdraw these Criminal Original Petitions.

10.In view of the submissions made by the learned counsel for the petitioner, these Criminal Original Petitions are dismissed as withdrawn.

11.At this stage, the learned counsel for the petitioner seeks dispensed with of the petitioner's appearance before the trial Court for the reason that the petitioner is an Advocate, who is practicing in the trial Court. If the petitioner appears before the trial Court during trial, it would cause humiliation and affect her carrier.

12.Considering the above submission of the learned counsel for the petitioner, it is made clear that the petitioner is to file a petition under Section 205 Cr.P.C., before the trial Court and also affidavit stating that she would not dispute her identity during the trial; cooperate with the trial; cross examine the witnesses then and there without seeking any unnecessary adjournments and she would not be cause for delay of the trial. The trial Court is to consider the petition under Section 205 Cr.P.C., liberally. Consequently, the connected miscellaneous petitions are closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

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To

The Judicial Magistrate,
Fast Track Court, Magistrate Level,
Dharmapuri.

+1cc to Mr.D.Ramesh Kumar, Advocate Sr.1280
+1cc to Mr.Govind Chandrasekhar, Advocate Sr.2066

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