



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2022

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CrI.O.P.No.11234 of 2022
and
CrI.M.P.No.6461 of 2022

Mrs.M.Gandhimathi

... Petitioner/Accused

Vs.

R.Sivakumar

... Respondent/Complainant

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to call for the entire records relating to S.T.C.No.2609 of 2016 pending before Judicial Magistrate I, Pollachi and quash the same.

For Petitioner : Mr.S.Sridharan

ORDER

This Criminal Original Petition has been filed to quash the proceedings initiated in S.T.C.No.2609 of 2016 pending before the Judicial Magistrate I, Pollachi.

2. The case of the prosecution is that on 10.12.2012, the petitioner obtained a loan of Rs.12,00,000/- from the defacto complainant and executed a promissory note for the same. Thereafter, the petitioner had issued a cheque towards part satisfaction of the loan. When the cheque was presented for encashment, the same was dishonoured for the reason "Account closed". After complying the statutory notice, the defacto complainant filed a complaint under Section 138 of Negotiable Instrument Act against the petitioner.

3. The main contention of the learned counsel for the petitioner is that the cheque belonging to the partnership firm was stolen and the same was issued in an individual name. Therefore, there is no legally enforceable debt and further the account from which the cheque was issued was closed, prior to the date of its issuance. Hence, he seeks to quash the proceedings.

4. At the outset, this Court is unable to persuade such



contention, whether the cheque was stolen or not is a matter of evidence. It requires appreciation and production of proper evidence in the Trial Court. Admittedly, it appears that the Cheque was issued on the account maintained by the petitioner. Such being the position, it is for the petitioner to dislodge the legal presumptions as envisaged under Sections 138 and 139 of the Negotiable Instruments Act.

5. In such view of the matter whether the cheque has been stolen or not has to be decided only by the trial Court on appreciation of proper evidence. This Court cannot conduct the mini trial. In view of such finding, this Court does not find any merits in this case.

6. Accordingly, this Criminal Original Petition stands dismissed. Further, the trial Court shall expedite the trial and dispose the matter within a period of six months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

nr/ham

To

The Judicial Magistrate I, Pollachi

Crl.O.P.No.11234 of 2022
and
Crl.M.P.No.6461 of 2022

VG-II(CO)
SB(20/06/2022)