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*Crl.O.P.No.18166 of 2019  
and Crl.M.P.No.9206 of 2019*



**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 05.12.2022**

**CORAM:**

**THE HONOURABLE MS.JUSTICE R.N.MANJULA**

**Crl.O.P.No.18166 of 2019  
and Crl.M.P.No.9206 of 2019**

Malathy

...

Petitioner

***versus***

John Miller

...

Respondent

**PRAYER:** Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, praying to call for the records pertaining to the proceedings pending in C.C.No.10 of 2018 on the file of the learned Judicial Magistrate, Arakkonam, Vellore District and quash the same.

For Petitioner : Mr.D.Dayalan

For Respondent : M/s.P.V.Rajeswari

**ORDER**

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.10 of 2018 on the file of the learned Judicial Magistrate, Arakkonam, Vellore District.



2. The petitioner is the sole accused in the complaint preferred by the respondent for an offence under Section 138 of Negotiable Instruments Act. It is alleged that the petitioner had availed a loan of Rs.4,52,500/- from the complainant on 01.05.2015 and issued a post dated cheque [bearing no.717282 drawn on State Bank of India, Thiruvallur Branch dated 26.06.2015] in the name of the complainant. When the cheque was presented for collection through State Bank of India, Arakkonam on 27.06.2015 and 31.07.2015, it was returned for the reason “insufficient funds”. Subsequently, the respondent has filed a complaint against the petitioner after issuing notice.

3. The learned counsel for the petitioner submitted that there is no loan transaction between the petitioner and the *de facto* complainant; there was a loan transaction between the petitioner and one Arul, who is a money lender and he used to take blank cheques from the petitioner. The respondent is a friend of the said Arul and he had managed to get the cheque from Arul and misused it for the purpose of this case.



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4. The learned counsel for the respondent submitted that the respondent has filed the complaint only because the cheque issued to him on 26.06.2015 towards discharge of the loan availed by the petitioner from the respondent. The respondent has filed the complaint after observing the legal mandate and the learned Judicial Magistrate, Arakkonam, Vellore District had taken the case on file only after the respondent has made out a *prima facie* case against the petitioner under Section 138 of Negotiable Instruments Act.

5. The fact that the petitioner had affixed the signature on the impugned cheque is not in dispute as per Section 139 of Negotiable Instruments Act; when the executant of the cheque does not deny the signature on the cheque, the initial presumption will go in favour of the complainant that the cheque has been issued for a legally enforceable debt or liability. It is for the petitioner to rebut the same with acceptable evidence. Even though the petitioner is at liberty to take up the points which now made before the Court as her defence, they cannot be taken as proof without allowing the parties to subject themselves for trial.



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6. Since the essential requirements for allowing a case under Section 138 of Negotiable Instruments Act has been duly complied and there are enough ingredients in the complaint to make out a case under Section 138 of Negotiable Instruments Act, the learned Judicial Magistrate, Arakkonam, Vellore District has taken the case on file. This is a case which does not disclose any cause of action or any material particulars so as to quash the same at the threshold stage itself.

7. With these observations, this Criminal Original Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed.

**05.12.2022**

Speaking order / Non-speaking order

Index : Yes / No

Internet : Yes

sri



*Crl.O.P.No.18166 of 2017  
and Crl.M.P.No.9206 of 2017*



WEB COPY To

The Judicial Magistrate,  
Arakkonam, Vellore District.



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**R.N.MANJULA, J.**

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**05.12.2022**  
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