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Crl.O.P.No.21807 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2022

CORAM:

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

Crl.O.P.No.21807 of 2022
and Crl.MP.Nos.14094 & 14098 of 2022

1. P. Kannan

2. Anitha Kannan

3. Microtech Diagnostic Centre,
Rep.by its Authorised Signatory,
P.Kannan
40 & 41, Brindavan Nagar Main road,
Shawwalace Colony, 3rd street,
Adambakkam,
Chennai - 600 088.

Petitioners

...

Vs

K. Sivakumar
Respondent

...

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C.
praying to call for the records in C.C.No.15 of 2022, pending on the file of the
learned Fast Track Court, Magistrate Level, Alandur, Kancheepuram district
and quash the same.

For Petitioners : Mr.P.Suresh



Crl.O.P.No.21807 of 2022

For Respondent : Mr.R.Bhalasubramaniom

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ORDER

This criminal original petition has been filed to call for the records in C.C.No.15 of 2022, pending on the file of the learned Fast Track Court, Magistrate Level, Alandur, Kancheepuram district and quash the same.

2. Earlier, by an order of this Court dated 14.10.2022 the case as against the petitioners 1 & 3/ A1 & A3 were dismissed as withdrawn.

3. The learned counsel appearing for the 2nd petitioner/A2 submitted that the second petitioner is the wife of the first petitioner Kannan and admittedly there was a loan transaction between 1st petitioner/A1 and the defacto complainant's father and the disputed cheque has been issued only by the first petitioner Kannan on behalf of Microtech Diagnostic Centre which is a proprietary concern. He would further submit that the second petitioner Anitha Kannan is no way connected with the Microtech Diagnostic Centre and no way connected with the dishonouring of cheque. Therefore the criminal original petition against the second petitioner is liable to be quashed.



Crl.O.P.No.21807 of 2022

4. The learned counsel for the respondent submitted that the second petitioner along with her husband Kannan borrowed a sum of Rs.13 lakhs from the complainant's father late K.Karuppasamy for their children's education and for business development. Initially, they borrowed a sum of Rs.10 lakhs on 01.06.2014 and an loan agreement was entered into between the complainant's father and the petitioners 1 and 2 and they have also issued a postdated cheque dated 31.12.2018 and also agreed to pay 12% as interest for the borrowed amount. Again on 10.01.2015, the 1st and 2nd accused once again borrowed an amount of Rs.3,00,000/- and issued another cheque dated 30.06.2019 towards repayment of the additional amount borrowed. When the cheques were presented for encashment, the same were returned with an endorsement "insufficient fund". Thus the petitioners 1 and 2/A1 and A2 cheated the complainant by not repaying the borrowal amount. Hence this petition is not maintainable and pleaded to dismiss the same.

5. Heard both sides and perused the materials available on record.

6. A perusal of the records reveal that the petitioners are accused in



Crl.O.P.No.21807 of 2022

C.C.No.15 of 2022 on the file of the Fast Track Court, Magistrate Level, Alandur, Chennai. Further, the petitioners 1 & 2/A1 and A2 are known persons to the complainant and his family members. The first and second petitioners borrowed a sum of Rs.13 lakhs from the complainant and agreed to repay the same along with 12% interest. It is alleged in the complaint that in order to discharge the loan, they gave disputed cheque bearing No. 642510 dated 30.06.2021 drawn on State Bank of India, Brindhavan Nagar, Adambakkam and the same was dishonoured when presented for encashment. Hence a private complaint has been lodged against the petitioners. The allegations in the complaint further reveals that the disputed cheque has been issued on behalf of Microtech Diagnostic Centre and signed by Kannan the first accused and there is no allegation in the complaint that the second petitioner Anitha Kannan is either a partner to the Microtech Diagnostic Centre, or running the said partnership firm; further there is no evidence to connect the second petitioner with regard to issuance of such disputed cheque. Under the provisions of section 138 of Negotiable Instruments Act, if the cheque is issued on behalf of a proprietary concern, the signatory of such dishonoured cheque alone is liable to be prosecuted, in



Crl.O.P.No.21807 of 2022

his individual capacity and not others. Therefore, in the absence of any material to connect the second petitioner with the offence of dishonouring the cheque, the 2nd petitioner cannot be prosecuted for the offence under Sections 138 & 141 of N.I.Act, hence the criminal proceedings initiated against the second petitioner viz., Anitha Kannan is unsustainable. In view of the above discussions, the criminal proceedings initiated against the 2nd respondent/A2 in C.C.No.15 of 2022 on the file of the Fast Track Court, Magistrate Level, Alandur, Kancheepuram District is hereby quashed. The trial Court is hereby directed to continue the criminal proceedings initiated against the petitioners 1 and 3 and complete the same within a period of four months from the date of receipt of a copy of this order.

7. With the above observation this criminal original petition is allowed and the case in C.C.No.15 of 2022 pending on the file of the learned Fast Track Court, Magistrate level, Alandur Kancheepuram district is hereby quashed as far as the second petitioner/A2, namely Anitha Kannan is concerned. Consequently connected miscellaneous petitions are also closed.



Crl.O.P.No.21807 of 2022

16.11.2022

To

1. The Fast Track Court, Magistrate Level,
Alandur,
Kancheepuram district
2. The Public Prosecutor,
High Court of Madras.



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Crl.O.P.No.21807 of 2022

V. SIVAGNANAM, J.

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Crl.O.P.No.21807 of 2022

16.11.2022