



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.01.2022

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THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

WEB COPY

CRL.O.P. (MD) .No.17656 of 2019

and

CRL.MP. (MD) Nos.10408 and 10409 of 2019

R.Geetha : Petitioner/2nd Accused

Vs.

P.S.Murali : Respondent/Complainant

PRAYER : Criminal Original Petition has been filed under Section 482 of Cr.P.C, to call for the records relating to C.C.No.324 of 2019, on the file of the Judicial Magistrate Court, Rajapalayam and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.S.Venkatesh

For Respondent : Mr.S.Vinoth

ORDER

The above Criminal Original Petition has been filed invoking Section 482 Cr.P.C., seeking orders to call for the records relating to the case in C.C.No.324 of 2019, pending on the file of the Judicial Magistrate, Rajapalayam and quash the same.

2. The petitioner is the second accused and the first accused is the husband of the second accused in C.C.No.324 of 2019, on the file of the Judicial Magistrate, Rajapalayam. The respondent has filed a private complaint under Section 200 Cr.P.C., against two accused including the petitioner, for the alleged offence under Section 138 r/w 142 of the Negotiable Instruments Act.

3. The case of the respondent/complainant is that on 10.01.2018, both the accused met the complainant and borrowed a sum of Rs.80,000/- for their urgent expenses agreeing to repay the same with interest at the rate of 1% per month, that despite the repeated demands of the complainant, the accused had not chosen to repay the loan amount with interest, that the first accused met the complainant on 20.04.2019 and issued a cheque dated 08.05.2019 for Rs.80,000/- to discharge the above debt in part, that when the cheque was presented for collection, the same was returned for want of sufficient funds in the bank accounts of the accused, that thereafter, the complainant has sent a legal notice dated 11.05.2019



to both the accused demanding the payment of the amount due to him, that though the accused have received the notice, they have neither chosen to repay the amount nor sent any reply and that therefore, the complainant was constrained to prefer the above complaint.

4. The learned Counsel for the petitioner would submit that the complainant himself in his complaint has specifically stated that the cheque in question was issued only by the first accused and not by the petitioner. He would further contend that since the petitioner is not the signatory to the cheque and the cheque in question was not drawn by the petitioner, the question of mulcting the criminal liability on the petitioner does not arise and that therefore, the very taking cognizance of the offence under Section 138 of the Negotiable Instruments Act against the petitioner is legally unsustainable and the same is liable to be quashed.

5. At this juncture, the learned Counsel for the respondent/complainant would submit that though the complainant has filed the complaint against the petitioner and her husband, the learned Judicial Magistrate, after recording of the sworn statement, has taken cognizance of the case only as against the first accused and dismissed the complaint as against the present petitioner.

6. The Registry, on getting information from the concerned Court, informed to this Court that the learned Judicial Magistrate had taken cognizance of the case as against the first accused on 18.10.2019 and dismissed the complaint as against the petitioner/second accused, but oversight, the summons was sent to the petitioner herein.

7. Since the case as against the petitioner herein was dismissed and no cognizance was taken as against the present petitioner, nothing survives for further adjudication in this matter.

8. In the result, this Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petitions are also dismissed.

Sd/-

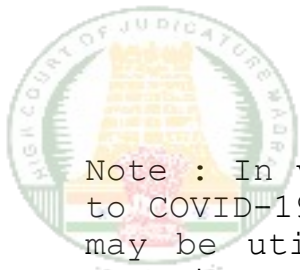
Assistant Registrar(P & A)

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Judicial Magistrate Court,
Rajapalayam.

+1 CC to M/s.S.VENKATESH, Advocate (SR-1547[F] dated 12/01/2022)

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