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Crl.OP.No.2670 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2023

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

**Crl.O.P.No.2670 of 2023
and Crl.M.P.No.1558 of 2023**

Sivasangari

...Petitioner

Vs.

M/s.Shriram Transport Finance Co.Ltd.,

Represented by its Deputy Manager,

K.Arulraj S/o.M.Kasiraj

No.99/1, 1st Floor, Mailam main Road,

Tindivanam

...Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the proceeding in C.C.No.267 of 2022 on the file of the learned Judicial Magistrate No.I at Tindivanam and quash the same.

For Petitioner : Mr.P.Suresh

For Respondent : No appearance

ORDER



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This Criminal Original Petition has been filed to call for the records pertaining to the proceeding in C.C.No.267 of 2022 on the file of the learned Judicial Magistrate No.I at Tindivanam and quash the same.

2.The learned counsel for the petitioner submitted that petitioner and her husband borrowed a sum of Rs.3,00,00,000/- from the respondent in 2017 and 2018 for their business purpose. Petitioner Sivasangari and her husband Kumaravel had also executed mortgage by deposit of title deeds on 29.11.2017. At the time of lending the money, respondent also secured blank cheques as security. Using the cheques given for security, this case is filed. When there is mortgage by deposit of title deeds executed is in force, the respondent can always file a civil suit for recovery of money. Filing of the criminal complaint under Section 138 (b) and 142 of the Negotiable Instruments Act is nothing but an abuse of process of Court. Therefore, he prays for dismissal of the case in C.C.No.267 of 2022.

3.Considered the submission of learned counsel for the petitioner and perused the records.



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4.The complaint allegations show that petitioner was given financial assistance in the form of loan to an extent of Rs.50,00,000/- through a term loan agreement No.MARKMO711290002 dated 30.11.2017. Petitioner agreed to pay finance charges of Rs.37,06,933/- for 72 months totalling Rs.87,06,933/-. The monthly installments are payable at the rate of Rs.1,13,114/- for 72 months, commencing from 15.01.2018 to 15.12.2023. Petitioner was irregular in payment of monthly installments. When demand was made for payment of loan amount, petitioner issued a cheque dated 20.10.2021 for a sum of Rs.15,00,000/- on Indian Bank, Marakkanam Branch. Respondent presented that cheque for collection on 20.10.2021 through ICICI Bank, Tindivanam. The cheque was returned unpaid for the reason that “Insufficiency of funds”. Respondent issued a statutory notice on 02.11.2021 calling upon the petitioner to pay the amount. Notice was refused by the petitioner on 15.11.2021, necessitating the filing of the complaint.

5.The main submission of the learned counsel for the petitioner is that since there is an existing and enforceable mortgage is available to recover



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the amount, the case instituted under Section 138 of the Negotiable Instruments Act cannot be maintainable. In the considered view of this Court, this submission of the learned counsel for the petitioner cannot be accepted. The reason is that it is claimed in the complaint that petitioner was irregular in making installment payments and when demanded the loan amount, the cheque was given towards part discharge of debt amount. Later it was found that there was no sufficient fund in the account. It is admitted that the cheque was issued for the pending loan amount and returned for want of funds. Therefore, this Court is of the view that respondent has made out a case for proceeding against the petitioner under Section 138 of the Negotiable Instruments Act.

6.In this view of the matter, this Court finds no merits in this petition. Therefore, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No

Speaking Order: Yes/No



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To

- 1.The Judicial Magistrate No.I,
Tindivanam.
- 2.The Public Prosecutor
High Court of Madras.



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G.CHANDRASEKHARAN.J.,

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