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Crl.O.P.No.1534 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2023

CORAM:

THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

Crl.O.P.No.1534 of 2021
and
Crl.M.P.Nos.890 & 891 of 2021

Kavitha

...Petitioner / Accused

-Vs-

Antony Maria Prasand

... Respondent / Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for records relating to the proceedings in C.C.No.175 of 2020 on the file of the Judicial Magistrate, Fast Track Court No.II, Coimbatore, and quash the same.

For Petitioner

: Mr.V.Illanchezhian

For Respondent

: No appearance



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ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.175 of 2020 on the file of the Judicial Magistrate, Fast Track Court No – II, Coimbatore, filed for the offences under Section 138 of the Negotiable Instruments Act.

2.It is alleged in the complaint that the petitioner and her husband approached the complainant for a loan of Rs.2,00,000/- and in discharge of the said liability, they had issued a cheque for the said amount on 02.01.2020, which was drawn from HDFC Bank. When the said cheque was presented for collection, it was returned with an endorsement 'Drawers Signature Differs'. Hence the complaint.

3.The learned counsel for the petitioner submitted that the impugned complaint is clearly an abuse of process of law. The cheque was not issued in discharge of any liability. The respondent has misused the blank cheque drawn by the petitioner. The cheque was actually issued to one New Sony, Tuticorin. The said fact has been mentioned in the Insolvency Petition filed by the petitioner's husband in I.P.No.7 of 2018



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on the file of the Principal District Judge, Tuticorin. The above facts would fairly show that the impugned complaint is a malafide and hence liable to be quashed.

4.Though notice was served on the respondent, none has entered appearance for the respondent.

5.This Court finds force in the submissions made by the learned counsel for the petitioner, that in the Insolvency Petition, the subject cheque was mentioned as given to one “New Sony, Tuticorin”. However, the said fact has to be established only during trial and this Court cannot adjudicate those issues in this quash petition. Since the points raised by the learned counsel for the petitioner are factual in nature, it is open to the petitioner to establish the above facts before the trial Court. It is needless to say, that the trial Court shall consider the points raised by the petitioner.

6.In the result, this Criminal Original Petition is dismissed. Consequently, connected stay petition in Crl.M.P.No.890 of 2021 is



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closed. Since the petitioner is a lady, her personal appearance before the trial Court in C.C.No.175 of 2020 is dispensed with, unless the learned Magistrate considers her presence necessary for the progress of the trial. Hence, Crl.M.P.No.891 of 2021 is allowed

24.04.2023

smv

Index : Yes/No

Speaking order: Yes/No

Neutral citation : Yes/No

To,

1.The Judicial Magistrate,
Fast Track Court No.II,
Coimbatore.

2.The Public Prosecutor,
High Court of Madras.



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SUNDER MOHAN,J.
smv

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