



CRL.O.P.No.7113 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2023

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl.O.P.No.7113 of 2021

and

Crl.MP.No.4730 of 2019

R.Vinothini ... Petitioner/Accused

Versus

Rajesaker ... Respondent/Complainant

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in STC No.736 of 2019 on the file of the Fast Track Court at Magistrate Level II, Poonamallee and quash the same.

For Petitioner : Mr.B.Manoharan

For Respondent : No appearance

ORDER

This Criminal Original Petition has been filed to quash the proceedings in STC No.736 of 2019 on the file of the FTC, at Magistrate Level II Poonthamallee.

2.The petitioner is the sole accused against whom the respondent/complainant has filed a complaint for the offence under Section



138 of the Negotiable Instruments Act for dishonour of cheques. The petitioner and the respondent are husband and wife and have a male child studying in 12th standard.

3. Heard the submission made by the learned counsel for the petitioner and perused the materials available on record. Though notice was served on the respondent, he did not make his appearance either through his counsel or by himself.

4. The learned counsel for the petitioner submitted that taking advantage of his relationship with petitioner, the respondent tried to grab a huge sum of money from the petitioner's family in one way or other; the petitioner was having the habit of giving signatures on the blank papers and those cheques and were being misused by him for the purpose of this case. The learned counsel for the petitioner further submitted that the averments made in the complaint itself would show that the cheque has not been issued for any legally enforceable debt or liability and hence, the complaint should be quashed.

5. The complainant has stated in the complaint that by virtue of a compromise entered into between himself with the petitioner's mother and



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brother, on 28.06.2018 they agreed to pay a sum of Rs. 75,00,000/- as compensation on or before 28.12.2018 and they have also executed an undertaking letter dated 28.06.2018. The accused who has agreed to issue a cheque for a sum of Rs. 75,00,000/- on behalf of petitioner's mother.

6.It is further alleged that the mother of the petitioner has used all the cheque leaves in her cheque book and hence the accused volunteered to issue his cheque. It is further alleged that the accused issued three post dated cheques bearing Nos.995334, 995333 and 995335 dated 20.03.2019, 30.03.2019 and 01.05.2019 respectively, drawn at Andra Bank, Valasaravakkam branch for a sum of Rs.3,00,000/-, Rs.2,00,000/- and Rs.70,00,000/- totally Rs.75,00,000/-.

7.The petitioner and his mother have also executed undertaking letters dated 11.02.2019 and 14.02.219 respectively. After having paid a sum of Rs. 5,00,000/- the accused had got back the cheques bearing Nos.99533 & 995334. The other cheque which was retained by the respondent /complainant was presented for collection and it was returned for 'insufficient funds'.

8.The complainant has stated that the accused who is his wife is



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living separately for the past four years. Even the petitioner did not deny her signature on the impugned cheque, but the contention of the petitioner is that the cheque was not issued for any legally enforceable debt or liability but it was obtained due to undue influence exercised by the complainant by abusing the relationship.

9. These submissions of the petitioner can be a good defense. However, lot of facts are involved in the said defense and this Court cannot exercise its power under Sec.482 of Cr.P.C to come to any conclusion on these facts and they cannot be proved without the aid of trial.

10. The trial Court has to see at the time of receiving the complaint the prima facie facts as to whether the cheque was presented along with the complaint and whether the complainant has stated whether the cheque has been issued for any debt or liability and complied the mandates before filing the complaint. Since the complaint has those prima facie averments to make out a case under 138 NI Act by showing that the cheque was returned for insufficient funds, the case has been taken on file. The rest of the facts that has been raised by the petitioner as her defense cannot be dealt in this petition. It is needless to state that as per Section 139 NI Act, the initial



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presumption lies in favour of the petitioner and that cannot be taken away by any order passed under Sec.482 of Cr.P.C.

In the result, this Criminal Original Petition stands **dismissed**. However, considering the relationship between the petitioner and the respondent, the personal appearance of the petitioner is dispensed with unless it is specifically ordered by the learned trial Judge.

20.01.2023

Index: Yes/No
jrs



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R.N.MANJULA, J.,

jrs

To:

1.The Fast Track Court at Magistrate Level II,
Poonamallee

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and

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