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CRL.O.P.No.14804 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2023

CORAM:

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

Crl.O.P.No.14804 of 2021

and

Crl.MP.Nos.7681 & 8042 of 2021

Rohini	..	Petitioner/Accused
	Versus	
Dhanapal Shankaran	...	Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.23 of 2021 on the file of the Judicial Magistrate, Maduranthakam, pending disposal of the main quash petition.

For Petitioners	:	Mr. S.R.Varun Karthik
For Respondent	:	Mr.S.Sabarish for S.Kingstin Gerold

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.23 of 2021 on the file of the learned Judicial Magistrate, Maduranthakam.

2.The petitioner is the accused in C.C.No.23 of 2021 pending on the



file of the learned Judicial Magistrate, Maduranthakam. The complaint was given by the respondent on the allegation that the petitioner had committed the offence punishable under Sec.138 of NI Act. The impugned cheque was given for a sum of Rs.4,65,000/- dated 04.12.2019 drawn at City Union Bank, Vanakaram in favour of the respondent.

3.Heard the submissions made by the learned counsel on either side and perused the materials available on record.

4.The learned counsel for the petitioner submitted that the petitioner is the proprietrix of the workshop under the name and style of ARS Automotive and Race Motors. The said workshop is meant exclusively for luxury vehicles. The respondent is the customer of the petitioner's workshop and he dropped unregistered, dismantled, flood affected, Jaguar XF vehicle bearing Chassis No.SAJAC05V4FVT03215 and the petitioner's workshop for carrying on repair works of the said vehicle. The vehicle was dropped during May-2018 and the estimation of the repair work was Rs.,7,00,000/-. The respondent also agreed to meet out the said expenditure and he had paid a sum of Rs.4,65,000/- at three installments of Rs.2,00,000/- , Rs.1,25,000/- and Rs.1,40,000/- on various dates through online transaction. Subsequent



to that the petitioner was carrying the repair works. Since the vehicle was flood affected, it continued to be faulty and thereafter, the respondent had abandoned the vehicle. The respondent had also influenced the petitioner's husband and compelled him to execute a self declaration before the Maduravoyal Police Station to either fix the vehicle free of cost or to buy out the said vehicle for a cost fixed by the respondent. In order to save the reputation of the workshop the petitioner's husband accepted to refund Rs.4,65,000/-. In view of the reciprocal understanding that the respondent would take back the vehicle from the workshop and that the petitioner would also pay labour charge of Rs.65,000/-, he also executed a cheque dated 04.12.2019 for a sum of Rs.4,65,000/- and issued it to the respondent. However, the respondent did not come forward to take the vehicle from the premises of the petitioner. Considering all these facts the respondent has presented the cheque for collection and sent legal notice as though the petitioner had committed offence under Sec.138 of NI Act.

4.1.In fact the petitioner had transferred totally a sum of Rs. 4,00,000/- on three different dates and the said transactions would reflect in the bank statement of the petitioner. Only the balance amount of Rs.65,000/- was



retained by the petitioner towards the labour charges and hence, there is no liability borne by the petitioner on the impugned cheque based on which the complaint has been given.

5.The learned counsel for the respondent submitted that the alleged transfers to the tune of Rs.4,00,000/- made by the petitioner to the respondents bank account through online transaction does not have any relevance to the transactions borne through the impugned cheque. Since the petitioner had agreed to buy back the vehicle, he had paid an advance of Rs.4,00,000/- through the said transaction. However he has not repaid the amount already paid by the respondent to the petitioner towards the repair and towards the discharge of cheque, the impugned cheque was given. Further all these facts now stated by the petitioner can only be the facts that should be proved before the trial Court and without proving those facts the complaint cannot be quashed.

6.The cheque which was issued for a sum of Rs.4,65,000/- by the petitioner is not in dispute. Whatever may be the understanding and transactions surrounding the cheque, those matters are question of facts and only when the parties are subject to trial the facts submitted by the



respective parties can be proved. The petitioner has stated that online payment made by him to the respondent on various dates pertains to the discharge of the cheque amount. Whereas the respondent has stated that those transactions have got nothing to do with the cheque amount and it was an advance amount paid for purchasing the vehicle. When one fact is alleged by a party and the other party denies the same there arose an issue and it is the burden of the respective parties to prove or disprove the same.

7.At this stage the court can only appreciate whether the learned trial judge has reasons to find out a prima facie based on complaint and take cognizance of the same. It is needless to state that once the signature of the cheque is admitted, the presumption in respect of its legal enforceability would go in favour of the holder of the cheque. Though it is not a conclusive presumption and it is rebuttable, that cannot be done by this Court by conducting a roving enquiry. So I feel the petitioner can be given with the liberty to put forth all his contentions as his defense during the time of trial. Since the trial Judge has got reasons to find out a prima facie case



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R.N.MANJULA, J.,

jrs

under Sec.138 of NI Act on the complaint given by the respondent he had rightly taken case on file.

8. With the above stated reasons, I do not find any reason to quash the complaint in C.C.No.23 of 2021 pending on the file of the learned Judicial magistrate Court Maduranthakam.

In the result, the Criminal Original Petition is **dismissed**.
Consequently connected miscellaneous petition is closed.

30.01.2023

jrs

Index: Yes/No

Internet: Yes/No

Speaking /Non Speaking

To:

The Judicial Magistrate, Maduranthakam.

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