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Crl.O.P.No.18009 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.10.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.18009 of 2021

and

Crl.M.P.No.9910 of 2021

Aruna Sreenivasen
w/o.Sreenivasen,
Authorized signatory,
M/s. Sree & Associates Enforcement Agency,
Plot No. 1443, I-Block, 33rd Street,
Annanagar, Chennai – 600 040.

... Petitioner

Vs.

G.Venkataiah

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C.
praying to call for the records relating to S.T.C.No. 70 of 2021 on the file of
the Judicial Magistrate, Fast Track Court, Poonamallee and quash the same.

For Petitioner : Mr.B.S.Jhothiraman

For Respondent : Mr.P.Mohan Raj



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ORDER

This Petition has been filed to quash the proceeding in S.T.C.No. 70 of 2021 on the file of the Judicial Magistrate, Fast Track Court, Poonamallee.

2. The petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act. The respondent lodged a complaint alleging that the petitioner is running a business of recovery of loans in the name and style of “M/s. Sree & Associates Enforcement Agency”. The petitioner had received financial assistance from the respondent on several occasions. She had also approached the respondent through her husband for financial assistance for a sum of Rs.5,00,000/- to regularize the overdue account at UCO Bank, Purasawakkam Branch, Chennai.

3. The respondent had issued a cheque for a sum of Rs. 5,00,000/- as loan dated 25.12.2014. The cheque was encashed by the petitioner on 26.12.2014, on the same day she also executed a demand note in favour of the respondent. Once again the petitioner had approached the respondent for the



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financial assistance to the tune of Rs. 9,00,000/- and the same was also paid by the respondent by way of two cheques dated 22.01.2015. Both the cheques were encashed by the petitioner. Totally, she had borrowed a sum of Rs. 14,00,000/- from the respondent with the interest at the rate of 12% per annum. She had also repaid the sum of Rs. 5,00,000/- by issuance of three cheques in the year 2015 itself. She also paid interest for the remaining amount till the year 2020. In order to repay the entire loan amount, she had issued three cheques in favour of the respondent. All the three cheques were presented for collection and the same were returned for the reason "Account Closed". Therefore, the respondent sent a legal notice and filed a complaint for the offence punishable under Section 138 of the Negotiable Instrument Act. The same has been taken cognizance by the Trial Court and issued summons to the petitioner.

4. The learned counsel for the petitioner would submit that the debt itself a barred one. Even according to the respondent, the loan availed by the petitioner was in the years 2014 and 2015 whereas, the cheques were allegedly issued in the year 2020. Therefore, the debt itself a barred one and as such, the cheques were not issued for any "legally enforceable debt". He further



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submits that the respondent states that till the year 2020, the petitioner had paid interest but the respondent failed to produce any document to substantiate the said contention. The respondent also failed to state the date of issuance of demand note and did not even whisper about the demand note in the statutory notice issued under Section 138 of Negotiable Instruments Act. Further, the alleged cheques were issued in their personal capacity as well as in the capacity of the Authorised Signatory of M/s. Sree & Associates Enforcement Agency. Even then, the respondent failed to issue notice to the M/s. Sree & Associates Enforcement Agency. Therefore, the respondent filed a complaint without any cause of action under Section 138 of Negotiable Instruments Act.

5. In this regard, the learned counsel for the respondent relied upon the judgment of the Hon'ble Supreme Court of India passed in Criminal Appeal dated **06.09.2023** in the case of ***K.Hymavathi Vs. The State of Andhra Pradesh & Anr.*** Categorically held as follows:-

“From a perusal of the legal position enunciated, it is crystal clear that this Court keeping in perspective the nature of the proceedings arising under the NI Act and also keeping in view that the cheque itself is a



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promise to pay even if the debt is barred by time has in that circumstance kept in view the provision contained in Section 25(3) of the Contract Act and has indicated that if the question as to whether the debt or liability being barred by limitation was an issue to be considered in such proceedings, the same is to be decided based on the evidence to be adduced by the parties since the question of limitation is a mixed question of law and fact. It is only in cases wherein an amount which is out and out non-recoverable, towards which a cheque is issued, dishonoured and for recovery of which a criminal action is initiated, the question of threshold jurisdiction will arise. In such cases, the Court exercising jurisdiction under Section 482 Crpc will be justified in interfering but not otherwise. In that light, this Court was of the view that entertaining a petition under Section 482 Crpc to quash the proceedings at the stage earlier to the evidence would not be justified.”

6. Thus, it is clear that the cheques itself is a promise to pay even if the debt is barred by time. Further, whether the debt or liability being barred by limitation is an issue to be considered based on the evidence to be adduced by the parties before the Trial Court since, the question of limitation is a mixed question of law and fact. Therefore, on this ground, the complaint cannot be



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quashed. Further, the other grounds raised by the petitioner are also mixed question of fact and it is to be proved only before the Trial Court during the Trial.

7. In view of the above, this court is not inclined to quash the proceedings in S.T.C.No. 70 of 2021 on the file of the Judicial Magistrate, Fast Track Court, Poonamallee.

8. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

09.10.2023

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
nsl/veda

To
The Judicial Magistrate, Fast Track Court, Poonamallee.



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G.K.ILANTHIRAIYAN, J.

nsI/veda

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