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Crl.O.P.No.20079 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2023

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.20079 of 2019

and

Crl.M.P.Nos.10291 & 10292 of 2019

Miss Lavanya Ponnusamy

... Petitioner

Vs.

M/s.Consortium Clinical
Research (P) Ltd.,
Rep. by Managing Director,
Anandapadmanaban,
No.9/41, Kalki Gardens,
Sugunapuram,
Kuniamuthur,
Coimbatore - 641008.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to call for the records in C.C.No.1831 of 2018 on the file of Fast Track Court No.2, Coimbatore and quash the same in favour of petitioner.

For Petitioner : M/s.V.R.Annagandhi

For Respondent : No Appearance for sole respondent.



ORDER

The petition is to quash the private complaint filed under Section 138 of the Negotiable Instruments Act.

2. It is alleged in the complaint that the petitioner had joined the complainant company on a monthly salary of Rs.15,000/- as a Clinical Research Co-ordinator on 31.01.2018; that she had signed an agreement that she would be in employment for a period of 2 years; that she would give 3 months prior notice to the complainant if she wanted to resign from the company; that she gave a cheque for Rs.50,000/- as security for the said purpose; that on 14.07.2018, the petitioner left the service without prior intimation to the complainant, thus the petitioner was liable to pay Rs.50,000/- as agreed upon by her; that when the said cheque was presented for collection it was returned for the reason “ funds insufficient”.

3(a). The learned counsel for the petitioner submitted that at the time of handing over of the cheque, there was no debt or liability towards the complainant. The cheque was only issued as security and since it was issued for an uncertain future liability, the offence under Section 138 of the Negotiable Instrument Act is not made out.



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3(b). The learned counsel further submitted that the agreement between the complainant and the petitioner is unenforceable and hence the cheque cannot be said to be given in discharge of her legally enforceable liability.

4. Though notice sent to the respondent has been received by them, they have not chosen to enter appearance.

5. This Court finds that the admitted facts are that the petitioner had handed over the cheque for a sum of Rs.50,000/- at the time of her employment to the complainant. When the cheque was handed over to the complainant there was no debt or liability towards the complainant. The complaint is silent about the terms of the agreement between the petitioner and the complainant. The question is whether the employer is entitled to recover Rs.50,000/- as damages if the petitioner had violated the terms of the agreement. Since the admitted fact is that when the cheque was handed over there was no liability, the initial presumption is rebutted and the burden shifted to the complainant to establish that when it was presented there was a legally enforceable liability. The cheque was issued for a future uncertain



liability. The question as to whether the agreement of the nature stated in the complaint is valid and enforceable and whether the petitioner had violated the terms of the agreement have to be first determined to hold that there was a legally enforceable debt. This has to be decided by a Civil Court. In such circumstances, it cannot be said that the cheque was issued towards the discharge of debt or liability merely because the petitioner had not given notice while leaving from service. It is for the complainant to first establish in a Civil Court that the answers to the aforesaid questions are in their favour and they are entitled to compensation due to such leaving of service by the petitioner and then recover the same.

6. In view of the above, this Court is of the view that the impugned complaint based on the above facts is liable to be quashed. Hence, the same is quashed. Accordingly, the Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petitions are closed.

07.06.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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Crl.O.P.No.20079 of 20

To
The Fast Track Court No.2, Coimbatore.

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SUNDER MOHAN. J.

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