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Crl.O.P.No.24829 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

Crl.O.P.No.24829 of 2019

and

Crl.M.P.Nos.13246 & 13247 of 2019

Talat Fathima

...Petitioner

-Vs-

E.Velu

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records relating to the proceedings in C.C.No.116 of 2019 pending on the file of the Metropolitan Magistrate, F.T.C.No.III, Saidapet, Chennai and to quash the same.

For Petitioner : Mr.Swami Subramanian

For Respondent : Ms.Sangeetha Rajkumar



Crl.O.P.No.24829 of 2019

ORDER

This Criminal Original Petition has been filed to quash the complaint under Section 138 of Negotiable Instruments Act.

2.It is alleged in the complaint that the petitioner had issued a cheque for a sum of Rs.2,00,00,000/- in discharge of the loan obtained by her; that the said cheque was presented for collection; that it was dishonoured; and that the petitioner did not make payment in spite of the statutory notice.

3.Mr.Swamy Subramanian, learned counsel for the petitioner, strenuously contended that it is a mala-fide complaint; that the respondent had deliberately issued the statutory notice to the wrong address knowing fully well that the petitioner never lived in that address; that since the statutory notice has not been sent to the correct address, no cause of action would arise for initiating the complaint; that the petitioner had paid the substantial amounts to the respondent after the complaint was filed; and that there is an admission by the respondent that nearly a sum of Rs.2,00,00,000/- was paid by the petitioner's husband to the respondent. Therefore, the learned counsel prayed that the impugned complaint may be quashed.



Crl.O.P.No.24829 of 2019

4.The learned counsel for the respondent would submit that, even admittedly, only a portion of the cheque amount has been settled. The points raised by the learned counsel for the petitioner that there is no liability and that the notice was not issued to the correct address, are points that have to be adjudicated only before the trial Court and prayed for dismissal of the quash petition.

5.This Court finds that the point raised by the learned counsel for the petitioner that the notice was defective and the respondent had deliberately sent it to the wrong address, cannot be adjudicated in the quash petition. Further, this Court finds that the subsequent payments towards the cheque amount, even assuming to be true, cannot be the basis for quashing the complaint. The petitioner has to establish before the Trial Court that there is no liability. It is open to the petitioner to raise all the points before the Trial Court. Therefore, this Court is not inclined to entertain the quash petition.

6.With the above observations, this Criminal Original Petition is



Crl.O.P.No.24829 of 2019

dismissed. Consequently, connected Criminal Original Petitions are closed.

29.03.2023

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Internet: Yes

Index : Yes/No

Speaking order : Yes/No

Neutral Citation : Yes / No

To,

1.The Metropolitan Magistrate, F.T.C.No.III, Saidapet, Chennai.

2.The Public Prosecutor,
High Court of Madras.

SUNDER MOHAN,J.



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Crl.O.P.No.24829 of 2019

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