



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.22513 of 2023

and

Crl.M.P.Nos.15704 & 15707 of 2023

Sagunthala

... Petitioner

Vs.

M.V.Prakash (Alias) Yavasi Prakash

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to call for the records pertaining to the complaint pending in STC.No.6909 of 2022 on the file of the learned XX Metropolitan Magistrate, Allikulam, Egmore, Chennai.

For Petitioner : Mr.A.Natarajan Senior Counsel for
M/s.A.Madhumathi, Advocate

ORDER

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



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2. The learned Senior Counsel for the petitioner submitted that the dispute between the complainant and the accused husband occurred long back when there was an agreement to sell the property in Chennai, This led to the filing of the complaint by the husband of the petitioner against the defacto complainant. While so, the private complaint under Section 138 N.I. was initiated, as if the petitioner herein owed a sum of Rs.27 lakhs and failed to discharge the cheque dated 28.02.2022 bearing number 000005 drawn on HDFC bank, Kodambakkam Branch was given to the complainant but the said cheque on presentation bounced.

3. The learned Senior Counsel for the petitioner also submitted that on receipt of the statutory notice, a detailed reply was sent by the petitioner stating that the cheque from the HDFC bank from the account opened by the petitioner on 17.07.2017 and the same was closed as early as 13.11.2018 itself and while closing the account she found two cheques were missing and therefore instructed the bank to stop payment. Referring to the previous court proceedings between the parties and the denial of liability in the reply notice, the learned counsel submitted that



the foundation fact of liability to pay was discharged with this document and therefore the private complaint has to be quashed.

4. This Court, is of the view that when there is a statutory presumption against the drawer of the cheque under Section 20 of N.I.Act, the reverse burden to be discharged by the accused in the manner known to law before the trial court and the High court under Section 482 of Cr.P.C cannot usurp the role of trial court and conduct the trial, liability or non liability on whatever ground agitated before this Court are points be canvassed before the Trial Court. The reverse burden can be discharged by the petitioner leading evidence. Hence, the petition is dismissed.

5. The learned Senior counsel further submitted that the petitioner being a woman, her personal appearance on every hearing may be dispensed with. If such a petition is filed before the Trial Court, the Trial Court shall consider the request and pass appropriate orders under Section 317 or 205 of Cr.P.C., as the case may be.



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WEB COPY 6. With the above observation, this Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petition is also closed.

09.10.2023

Index : Yes/No

Neutral Citation : Yes/No

drl

To

1.The XX Metropolitan Magistrate,
Allikulam, Egmore, Chennai



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Dr.G.JAYACHANDRAN,J.

drl

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