



Crl.O.P.No.29668 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 26.06.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.29668 of 2022

and

Crl.M.P.No.18163 of 2022

N.Lakshmi

... Petitioner

Versus

S.M.Narayanasami

... Respondent

PRAYER : Criminal Original petition filed under Section 482 Cr.P.C. praying to call for the records in S.T.C.No.176 of 2022 on the file of the Hon'ble Judicial Magistrate Fast Track Court No.II at Erode District and quash the same.

For Petitioner : Mr.G.Saravana Kumar

For Respondent : Mr.A.M.Esakkiappan

ORDER

This petition has been filed seeking to quash the complaint in S.T.C.No.176 of 2022 on the file of the Judicial Magistrate Fast Track Court No.II at Erode District.



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2. The petitioner/accused in S.T.C.No.176 of 2022 on a private complaint filed by the respondent for offence under Section 138 of N.I. Act has filed this petition.

3. The primary contention of the petitioner is that the respondent complainant without arraying the company had filed the complaint in the individual capacity of the petitioner, since the cheque was issued for the liability of the company. Learned counsel for the petitioner submits that the petitioner was running a transport business, Spinning Mill business and she was also a Government approved P.W.D. Contractor. Her husband was actively taking part in the business. The company is projected for the business purpose. The petitioner is said to have been taken a loan of Rs.10,00,000/-. In repayment of the same, the cheque dated 18.08.2021 for a sum of Rs.10,00,000/- drawn on I.O.B., Dharmapuri had been issued.



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4. According to the petitioner, the petitioner's husband was actively taken part in the business and the petitioner was only a name sake Director in the business of the petitioner's company. Further, as early as on 13.01.2020, she had lodged a complaint by post to the Assistant Commissioner of Police making allegation against the employees of the petitioner company. The allegation is that the petitioner's husband fell ill and the petitioner spent her whole time in the hospital to take care of her husband. Taking advantage of her husband's illness, the employees of the petitioner company misused the undated and unfilled signed cheques and a complaint has been filed by the respondent. After receipt of the statutory notice dated 24.08.2021 the petitioner sent a reply about misuse of the cheque on 02.09.2021 and further reiterated that the cheque was not issued in discharge of any liability. Followed by the same, she instructed her Bank about lodging of complaint to the police and misuse of the cheques by the employees. Further the petitioner produced the copy of the cheque bearing No.043616 before this Court.



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Further submitted that the cheque had been received by the respondent/complainant by unlawful means. Hence, as per Section 58 of the N.I. Act, the petitioner could not honour the cheque. Assailing the above point, the present quash petition has been filed.

5. Learned counsel for the respondent/complainant submitted that the petitioner/accused and the respondent/complainant are known to each other for more than 20 years. For the business needs the petitioner borrowed a sum of Rs.10,00,000/-. In discharge of the said liability the cheque has been issued. This has been stated in the statutory notice and in the complaint. The petitioner as a defence is now propounding a theory as though the cheques have been stolen and through the employees of the petitioner company, the cheque has been misused by the respondent/complainant. He further submits that he is not aware about the earlier police complaint given on 13.01.2020. He further submits that in the complaint given to the police, there was no reference about the respondent/complainant. This complaint has been



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obviously given to create a defence in future. Further the complaint is said to have been given on 13.01.2020 that too by post. Thereafter, what has happened to the complaint, the petitioner is unable to give any reason. Further, submits that from the letter given to the Bank on 03.09.2021, the cheque pertaining to the case in S.T.C.No.176 of 2022 has not been referred which would expose hollowness in the petitioner's contention. Further submits that in this case chief examination of the complainant was recorded on 13.05.2022. Thereafter since the petitioner failed to cross examine the witnesses, after several adjournments the case was posted for appearance of the petitioner/accused and also to question her under Section 313 Cr.P.C. on 08.11.2022. Immediately thereafter on 18.11.2022 the above quash petition has been filed. After obtaining interim stay on 02.12.2022 the trial is stalled before the trial Court and the petitioner is not appearing before the trial Court. He further submits that the points raised by the petitioner are factual in nature.



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6. Considering the submissions made and on a perusal of the material this Court finds that the points raised by the petitioner are factual in nature. Learned counsel for the petitioner on instructions submitted that before the trial Court the case has been posted on 24.07.2023. On that day, the petitioner shall appear before the trial Court and necessarily participate in the trial and she will not be a reason for further delay of trial. Further, on perusal of the cheque produced before this Court it is seen that the cheque was signed by the petitioner in her individual capacity and it is not drawn by a company or a firm. In view of the same, this Court is not inclined to entertain this petition.

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

8. The trial Court is directed to complete the trial within a period of two months from 24.07.2023. It is made clear that the observations made



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herein is only for the purpose of disposing of the above petition. The trial Court uninfluenced with the above observations of this Court shall decide the case on its own merits and in accordance with law. The petitioner produced citations, which on the facts of this case are not applicable.

26.06.2023

Index : Yes / No
Internet : Yes/No
Speaking / Non-speaking order
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Note: Issue order copy on 20.07.2023

To

The Judicial Magistrate,
Fast Track Court No.II
Erode District.



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M.NIRMAL KUMAR, J.

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