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Crl.O.P.No.29991 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2023

CORAM:

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

Crl.O.P.No.29991 of 2019
and
Crl.M.P.Nos.16190 and 16191 of 2019

H.Ramani

...Petitioner

-Vs-

S.Rama Devi

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records on the file of V Metropolitan Magistrate, Egmore in C.C.No.2835 of 2015 and quash proceedings therein.

For Petitioner : Mr.V.V.Sairam

For Respondent : Not Ready in Notice,
No Appearance

ORDER

This Criminal Original Petition has been filed calling for the records on the file of V Metropolitan Magistrate, Egmore in C.C.No.2835 of 2015 and to quash the same.



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2. Heard the learned counsel for the petitioner and perused the materials available on record.

3. The petitioner is an accused in the complaint lodged by the respondent for the offence under Section 138 of Negotiable Instruments Act, alleging that the petitioner had borrowed a sum of Rs.10,00,000/- in two parts on 22.01.2014 and 28.01.2014. On the date of borrowal, the petitioner had also executed a pro-note for the said sum in favour of the respondent and agreed to pay the entire loan amount with interest at the rate of 12% per annum. Towards the repayment of the said loan, the petitioner had issued a cheque and the same was presented for collection. However, it was returned dishonour for the reason “Insufficient Funds”. After causing statutory notice, the respondent lodged a complaint and the same has been taken cognizance by the Trial Court in C.C.No.2835 of 2015.

4. The learned counsel for the petitioner would submit that in the statutory notice, the respondent stated that after borrowal of the said amount, it was treated as an advance for the purchase of land belonging



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to the petitioner by way of an oral agreement. However, it was not even whispered in the complaint. Therefore, the complaint itself is vitiated and liable to be quashed.

5. A perusal of the statutory notice dated 22.08.2015 revealed that the petitioner had borrowed a sum of Rs.10,00,000/- in two parts viz., Rs.5,00,000/- on 22.01.2014 and another sum of Rs.5,00,000/- on 28.01.2014. On the same date, the petitioner had also executed a pro-note for the said sum. Thereafter, the petitioner could not able to repay the said amount and agreed to sell his 1/3rd share of land in Plot No.20/73 situated at Annai Indra Nagar, 2nd street, Rajaji Nagar Extension, Villivakkam, Chennai-49, comprised in Survey No.176 bearing Patta No.155, to an extent of 1440 sq.ft by an oral agreement. However, the petitioner failed to sell his 1/3rd share in the said property. Therefore, the respondent lodged a complaint for the offence under Section 138 of Negotiable Instruments Act. It does not require to mention about the subsequent portion of the legal notice in the complaint. The first paragraph of the legal notice is very clear that the petitioner had borrowed a sum of Rs.10,00,000/- and had also executed a pro-note in



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favour of the respondent. That apart, Section 138(b) of Negotiable Instruments Act is very clear that the notice must contain the demand of the cheque amount.

6. Therefore, the points raised by the petitioner cannot be considered to quash the entire proceedings. Therefore, this Court is not inclined to quash the proceedings in C.C.No.2835 of 2015, on the file of V Metropolitan Magistrate, Egmore. However, the personal appearance of the petitioner is dispensed with and she shall be represented by a counsel after filing appropriate application. However, the petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C and at the time of passing judgment.

7. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous petitions are closed.

10.10.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
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G.K.ILANTHIRAIYAN. J.

mn

To

The V Metropolitan Magistrate, Egmore.

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and
Crl.M.P.Nos.16190 and 16191 of 2019

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