



Crl.O.P.(MD) No.15610 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2023

CORAM:

THE HONOURABLE **MR. JUSTICE K.K.RAMAKRISHNAN**

Crl.O.P(MD). No.15610 of 2020

and

Crl.M.P(MD).No.7638 of 2020

Mrs.Prabhavathy

... Petitioner

Vs.

S.Shenbagapandi

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to S.T.C.No.300 of 2018, on the file of the learned District Munsif-cum-Judicial Magistrate No.I, Usilampatti dated 21.03.2018 and to quash the same.

For Petitioner : Mr.K.R.Laxman

For Respondents : Mr.S.Ramachandra Pradeep

ORDER

This petition has been filed to quash the proceedings as against the petitioner herein in S.T.C.No.300 of 2018, on the file of the learned District Munsif-cum-Judicial Magistrate No.I, Usilampatti dated



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21.03.2018.

2.The case of the petitioner is that she has borrowed a sum of Rs.2,50,000/- from the respondent/complainant on 10.09.2017, for her emergency purpose, and she has also assured the complainant to repay the said amount with interest at the rate of 2% within a period of three months. For discharge her liability, the petitioner has handed over a post dated cheque bearing Registration No.460388 dated 05.12.2017 for a sum of Rs.2,50,000/-, drawn in State Bank of India, Gandhi Nagar Branch, Madurai. The respondent herein has presented the cheque for encashment on 05.12.2017, but the same was returned with a memo dated 06.12.2017 for the reason that “Insufficient Funds”, for which, on 07.12.2017, the respondent had also issued legal notice. The same was received by the petitioner and she again gave the false assurance to the respondent. The said cheque was again presented before the bank on 15.02.2018, once again the said cheque was returned with an endorsement “Funds Insufficient” vide a memo dated 16.02.2018. Due to which, the respondent herein has sent the second legal notice on 02.03.2018 and filed a complaint against the petitioner under Section 138(b) of the Negotiable Instrument Act. The same was taken on file in



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S.T.C.No.300 of 2018 before the learned District Munsif-cum- Judicial Magistrate No.I, Usilampatti.

3. When the matter was taken up for hearing, the learned counsel for the petitioner submitted that the learned trial Judge has committed error in taking the cognizance on the basis of the second notice and also failed to consider the cheque was presented after the validity period, but, he would further submit that the same would require the factual adjudication. Therefore, he seeks permission of this Court to raise the said issue before the learned trial Judge and also seeks the dispense with the appearance of the petitioner before the trial Court.

4. This Court accepts the request made by the learned counsel for the petitioner and dispose of this Criminal Original with the following terms:

4.1. The learned District Munsif-cum- Judicial Magistrate No.I, Usilampatti, is directed to dispose the case in S.T.C.No.300 of 2018 within a period of six months from the date of receipt of a copy of this order. The petitioner is at liberty to raise all the contention raised before this Court, before the learned trial Judge and the learned trial Judge is



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directed to consider the same independently as per law.

4(ii).The petitioner is a lady and he disputed the liability, her request to dispense with her appearance before the trial Court deserves to be accepted and her appearance is dispensed with before the trial Court on all hearing dates except the following hearings:

- (a) The date of initial questioning to answer the charges;
- (b) The date of questioning under Section 313 Cr.P.C;
- (c) On the date of Judgement.

4.(iii). The petitioner is directed to give an undertaking in the form of affidavit that they will be duly represented by a counsel on all hearing dates.

4.(iv). The petitioner shall not dispute the identity of the witnesses.

4.(v). The petitioner shall appear before the Court in the event their presence is insisted by the trial judge for the purpose of identification.

4.(vi). If the petitioner adopt any dilatory tactics, it is open to the Trial Court to insist for their appearance and deal with the petitioners in accordance with the judgment of Supreme Court of India in *State of*



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Uttar Pradesh Vs. Shambunath Singh, reported in 2001 (4) SCC 667.

Consequently, connected miscellaneous petition stands closed.

30.11.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

sbn

To

1. The District Munsif -cum- Judicial Magistrate,
Usilampatti.

2. The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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