



Crl.O.P.No.8755 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:08.04.2024

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.8755 of 2024

&

Crl.M.P.No.6304 of 2024

Dr.R.Sowmya

.. Petitioner

/versus/

1.P.Thangavel

2.Radhakrishnan

.. Respondents

Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records in S.T.C.No.442/2023 on the file of the Judicial Magistrate No.III, (FTC Magistrate Level), Coimbatore and quash the same.

For Petitioner

:Mr.B.Jawahar

ORDER

This Petition is filed to quash the criminal complaint taken on file for the offence under Section 138 of Negotiable Instruments Act, 1881.



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2. The complaint is filed on the premises that the petitioner herein is the daughter of one Radhakrishnan, who is the second respondent herein and both the petitioner and the 2nd respondent are known to the defacto complainant as family friend through his daughter, who is also a Doctor by Profession. A sum of Rs.13,00,000/- was borrowed from him by the petitioner and her father in two instalments for which, the father of the petitioner has executed a pro-note. Thereafter, to discharge the debt the petitioner herein gave subject cheque dated 15.02.2023, but the same was dishonoured due to insufficient fund.

3. The learned counsel appearing for the petitioner submits that the pro-note is executed by the father. Whereas the cheque of the petitioner has been presented for collection where there is legally enforceable debt payable to the complainant. It is submitted that the petitioner is not the party to the pro-note and therefore, there is no proof for borrowing the said sum. When the pro-note executed by the father is in possession of the complainant, there is no bar for him to



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proceed for recovery of money based on the pro-note. Therefore, the cheque of the petitioner cannot be constructed as instrument given to discharge the enforceable debt.

4. This Court on perusing the pro-note and the cheque as well as the averments made in the complaint finds that the petitioner and her father had money transaction with the complainant. The pro-note is dated 15.07.2022. The pro-note been signed by the father Radhakrishnan. To discharge the debt, the daughter has given the cheque, which is now the subject matter of the complaint. It is not the case of the petitioner that after enforcing the pro-note by filing the suit for recovery of money, the present cheque is presented.

5. It is the case of the complainant as well as the petitioner that there is one proceeding initiated, when the prior complaint under Section 138 of NI Act based on the cheque given by the daughter to discharge the debt of his father and the complaint clearly indicates that the borrowing was made by both of them, though the pro-note was signed by only her father. The contention is that the cheque was



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not issued for discharge of the debt incurred by the father. It is the matter of fact which has to be established in the trial but not by filing a petition under Section 482 of Cr.P.C.. Without trial, the merit of the complaint cannot be decided. Hence, this Criminal Original Petition is dismissed. It is open to the petitioner herein to raise all the points before the trial Court in the manner known to law. Consequently, connected Miscellaneous Petition is closed.

08.04.2024

Index:yes/no
Neutral Citation:yes/no
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To:

The Judicial Magistrate No.III,
(FTC Magistrate Level), Coimbatore



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DR.G.JAYACHANDRAN,J.

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