

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.06.2015

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.OP Nos.14955 of 2015

V.Arumugam

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Petitioner

Vs

1.The Superintendent of Police,
Coimbatore District.

2.The Inspector of Police,
B-7, Ramanathapuram Police Station,
Coimbatore District.

..

Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., praying to direct the 2nd respondent to register a case, investigate the matter and file a final report in accordance with law based on the petitioner's complaint dated 22.04.2015.

For Petitioner :Mr.S.Vinothkumar

For Respondents :Mr.C.Emalias

Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed praying to direct the 2nd respondent to register a case, investigate the matter and file a final report in accordance with law based on the petitioner's complaint dated 22.04.2015.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

3. It is the case of the petitioner that one Sujatha and Sunitha approached him and told him that they are into film production and said that they need some money for release of their film. Believing the representation, the petitioner gave Rs.10,00,000/- to Sujatha and Sunitha on 05.02.2014. It is alleged in the complaint that after release of the film, the duo did not make any payment. When the petitioner started demanding money, they gave a cheque for Rs.10,00,000/-, which was dishonoured when presented. Hence the petitioner has lodged the present complaint and he has approached this Court, to direct the Police to register the FIR.

4. The learned counsel for the petitioner relied upon the judgment of Supreme Court in Dashrath Rupsingh Rathod Vs. State of Maharashtra 2014(4) CTC 666, as follows :

"18. We feel compelled to reiterate our empathy with a payee, who has been duped or deluded by a swindler into accepting a Cheque as consideration for delivery of any of his property; or because of the receipt of a Cheque has induced the payee to omit to do anything resulting in some damage to the payee. The relief introduced by Section 138 of NI Act is in addition to the contemplations in the Indian Penal Code. It is still open to such a payee recipient of a dishonoured Cheque to lodge a First Information Report with the Police or file a Complaint directly before the concerned Magistrate. If the payee succeeds in establishing that the inducement for accepting a Cheque which subsequently bounced and had occurred where he resides or ordinarily transacts business, he will not have to suffer the travails of journeying to the place where the Cheque has been dishonoured. All remedies under the Indian Penal Code and Code of Criminal Procedure are available to such a payee if he chooses to pursue this course of action, rather than a Complaint under Section 138 of the NI Act. And of course, he can always file a Suit for recovery wherever the cause of action arises dependent on his choosing."

5. Relying upon the said paragraph, he contended that every case where a cheque is dishonoured, it cannot be stated that the entire transaction is a civil one. He also contended that the remedies open to the petitioner under Indian Penal Code and Criminal Procedure Code has been recognized in the said judgment.

6. There is no quarrel with the preposition laid down in the said judgment, wherein it is stated that even if a cheque is issued and if it is seen that the accused with an intention to cheat the complainant had issued the cheque, then a prosecution under Section 420 of IPC is maintainable.

7. On a reading of the facts obtaining in this case, it is seen that the said duo approached this petitioner for finance for their film. It is not the petitioner's case that after taking finance, they ran away or abandoned the film. The film was taken and it was released, as could be seen from the complaint itself. Thereafter, the duo did not return the money and instead gave a cheque, which got bounced. So, it does not seem to have any element of deception as inception, as required under Section 420 of IPC. Hence no positive directions can be issued to the respondents to register a case on the complaint given by the petitioner. Accordingly, this Criminal Original Petition is dismissed.

8. It is always open to the petitioner to work out the remedies under Negotiable Instruments Act, if the same is within the period of limitation.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1.The Superintendent of Police,
Coimbatore District.

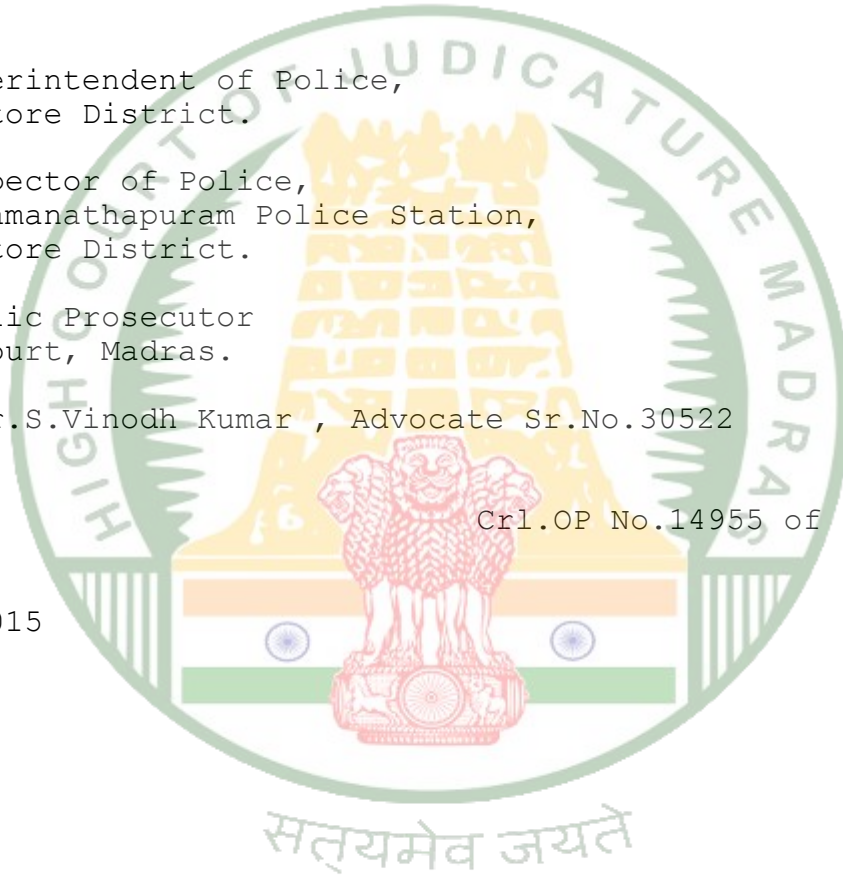
2.The Inspector of Police,
B-7, Ramanathapuram Police Station,
Coimbatore District.

3.The Public Prosecutor
High Court, Madras.

1 cc to Mr.S.Vinodh Kumar , Advocate Sr.No.30522

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