

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

Crl.O.P. No.21398 of 2014
and
M.P.Nos.1 and 3 of 2014

Ravi Prabakar

... Petitioner

vs.

S.Bala
Shankar

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for the records relating to the case in C.C.No.1117 of 2013 on the file of the Judicial Magistrate No.II, Coimbatore, quash the same and pass such other order.

For Petitioner : Mr.C.Rajakumar

For Respondent : Mr.A.Suresh Sakthi Murugan

O R D E R

The petitioner has filed the above petition to quash the complaint in C.C.No.1117/2013 pending on the file of the learned Judicial Magistrate No.II, Coimbatore.

2. It is submitted by the learned counsel for the petitioner that the respondent filed a private complaint under Section 138 of the Negotiable Instruments Act against the petitioner by mentioning the name of the petitioner as Ravi Prabakar @ Isha Ravi Y.P., s/o. Arcot Ethiraj Prabhakar, stating that towards the liability payable by the petitioner, the petitioner issued a cheque No.000031 dated 31.07.2013 for a sum of Rs.16 lakhs drawn on Lakshmi Vilas Bank, Adyar Branch, Chennai, and the cheque was returned with an endorsement "funds insufficient" and therefore, after complying with the statutory notice, the case was filed by the respondent. He further submitted that Cheque No.000031 dated 31.07.2013 was issued by the petitioner's wife as security for the amount borrowed by her from the respondent and the same has been misused by the respondent by filling up the date and the amount and even the drawer name has also been mentioned as Isha Ravi.Y.P. in the cheque. Nevertheless, a notice was issued to the petitioner and the petitioner has not issued any cheque and the

petitioner cannot be prosecuted for the alleged offence having committed under Section 138 of the N.I.Act. Therefore, the complaint in C.C.No.1117/2013 is liable to be quashed.

3. It is submitted by the learned counsel for the respondent/complainant that though the cheque was issued by Isha Ravi Y.P., the respondent was under the impression that the petitioner herein issued the cheque and he is having the alias name as Isha Ravi Y.P., and therefore, notice was issued to the petitioner by mentioning the alias name as Isha Ravi Y.P., and the petitioner received notice and he did not reply and therefore, the complaint was filed and having kept quiet for all these years, now the petitioner has filed this petition on the ground that he has not issued the cheque and therefore, he submitted that one more opportunity may be given to the respondent either to amend the cause title in C.C. No.1117/13 pending on the file of the Judicial Magistrate No.II, Coimbatore or the respondent may be given an opportunity to issue fresh notice and file a fresh complaint against the wife of the petitioner herein.

4. I am unable to accept the contention of the learned counsel for the respondent. It is seen from the cheque which is the subject matter of C.C.No.1117/2013 that the drawer of the cheque was Isha Ravi Y.P. and the notice was sent to Ravi Prabhakar @ Isha Ravi.Y.P.,. While describing Ravi Prabhakar @ Isha Ravi. Y.P., it is stated that the said person is the son of Arcot Ethiraj Prabhakar. Therefore, notice was sent to Ravi Prabhakar herein by adding Isha Ravi Y.P., and the prosecution has not been initiated against Isha Ravi Y.P., and the statutory notice was given to Ravi Prabhakar @ Isha Ravi. Y.P.,. As the petitioner herein is not the drawer of the cheque, he cannot be prosecuted under Section 138 of the N.I.Act and therefore, the case filed against the petitioner in C.C.No.1117/2013 pending on the file of the Judicial Magistrate No.II, Coimbatore, is liable to be quashed and it is quashed and this petition is allowed. The connected Miscellaneous Petitions are closed.

5. As regards the contention of the learned counsel for the respondent that the respondent may be permitted to amend the cause title in C.C.No.1117/2013 or an opportunity may be given to him to file a fresh case cannot also be considered as the cheque has become stale by this time and therefore, the cheque cannot be re-presented. Therefore, a fresh complaint cannot be filed. Further, the cause title cannot also be amended by impleading Isha Ravi. Y.P., in the present application, as no statutory notice was given to Isha Ravi. Y.P.,.

Sd/-
Deputy Registrar(J)

//True Copy//

Sub Assistant Registrar

asvm

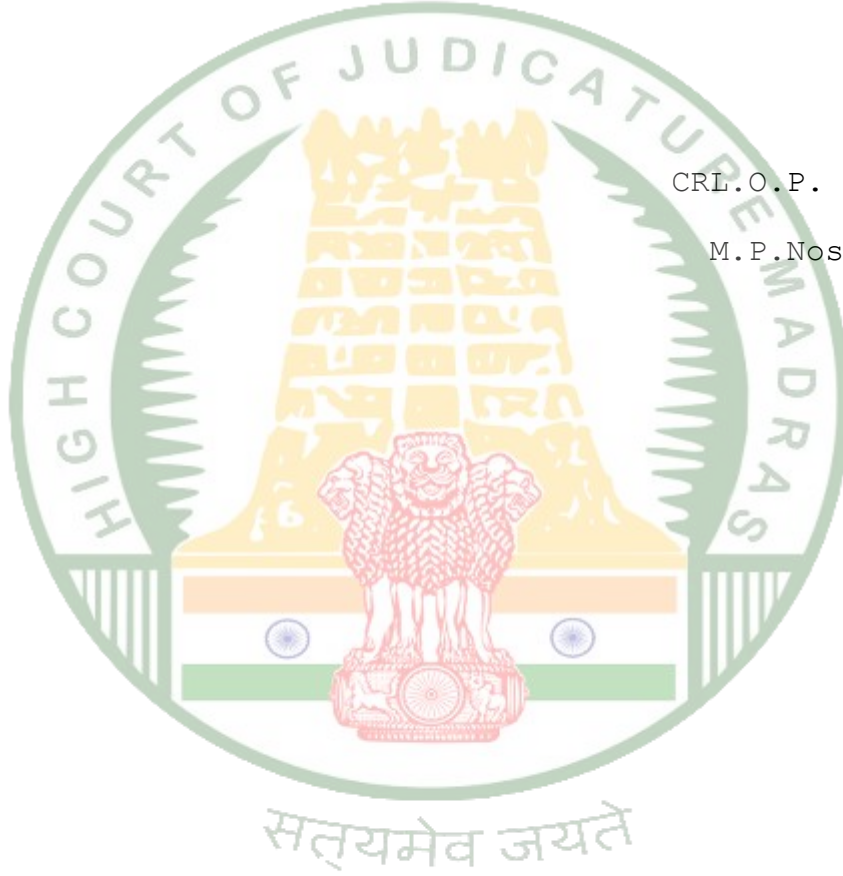
To

The Judicial Magistrate No.II,
Coimbatore.

+lcc to Mr.A.Suresh Sakthi Murugan, Advocate SR 721
+lcc to Mr.C.Rajakumar, Advocate Sr 792

VSN (CO)
km/21.1.

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