

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2015

C O R A M

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.Nos.19515 & 19516 of 2015
and
M.P.Nos.1 & 1 of 2015

R.Surender

...Petitioner in
both Crl.O.Ps.

Vs.

Venkata Subba Naidu

.... Respondent
in Crl.OP.19515/2015

M.Natarajan

... Respondent in
Crl.OP.19516/2015

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C to call for the entire file relating to the complaint in CC Nos.118 & 119 of 2015 respectively on the file of the Judicial Magistrate Court - 1, Udumalpet and quash the same.

For Petitioner in : Mr.V.Ramamoorthy
both Crl.OPs. for Mr.S.Thirumavalavan

For Respondents in : Mr.N.Umapathi
both Crl.OPs.

सत्यमेव जयते
O R D E R

These Criminal Original Petitions have been filed to call for the entire files relating to the complaint in CC Nos.118 & 119 of 2015 respectively on the file of the Judicial Magistrate Court - 1, Udumalpet and quash the same.

2. For the sake of convenience, the parties will be referred to as complainants and the accused.

3. It is the case of the complainants that the accused borrowed a sum of Rs.7,50,000/- from each of the complainants and gave the impugned cheques for Rs.7,50,000/- each, which when presented were returned by the ICICI Bank, Udumalpet Branch on

the reasoning "Account Closed". Thereafter, the complainants issued Statutory notices dated 30.04.2015, for which, the accused gave reply notices on 11.05.2015. Since the accused did not comply with the statutory notices by paying the amount, the complainants have launched the present prosecutions in C.C.Nos.118 & 119 of 2015 before the learned Judicial Magistrate No.1, Udumalpet, challenging which, the accused is before this Court.

4. Heard Mr.V.Ramamoorthy, learned counsel for the petitioner and Mr.Umapathi, learned counsel for the respondents.

5. The learned counsel for the petitioner submitted that the accused had never opened any account with Udumalpet ICICI Bank and that, somebody had opened the account in his name and therefore, the entire prosecution is abuse of process of law.

6. Per contra, the learned counsel for the respondents contended that whether the accused had opened the bank account at all or not is a question of fact that has to be determined only during the trial.

7. Mr.Ramamoorthy, learned counsel for the petitioner brought to the notice of this Court that in the reply notices dated 11.05.2015, the petitioner has taken a stand that the bank account was never opened by him with Udumalpet ICICI bank.

8. As contended by the learned counsel for the petitioner, in these cases, the impugned cheques were returned on the ground "account closed" and not on the ground of invalid cheques and not on the ground that the petitioner is not an account holder in the said bank.

9. As contended by the learned counsel for the complainants, this Court cannot go into the disputed questions of fact in a proceeding under Section 482 Cr.P.C. as held by the Hon'ble Supreme Court in 2015(4) SCALE 371 (S.Krishnamoorthy Vs.Chellammal). These aspects will be determined only during the trial by examining the Branch Manager of ICICI Bank.

10. In view of the above, this petition is dismissed with liberty to the accused to raise all the points before the trial Court. The trial Court is directed to take up this case on priority basis and dispose of the same within a period of six months from the date of receipt of a copy of this order. The accused and the complainants shall co-operate with the trial Court in completing the trial by examining and cross examining the respondents' witnesses without adopting dilatory tactics. Consequently, connected miscellaneous petitions are closed.

11. At this juncture, the learned counsel for the petitioner submitted that the petitioner's presence before the trial Court may be dispensed with.

12. Accepting the submission of the learned counsel for the petitioner, the petitioner is directed to appear before the trial Court for receiving the copies, for framing charge; for answering questions under Section 313 Cr.P.C and on the date of judgment. On the other dates, if the petitioner files an application under Section 317 Cr.P.C. undertaking to the Court that he will not dispute his identity and that, his counsel will cross-examine the prosecution witnesses in his absence without adopting dilatory tactics, then, the trial Court may dispense with the appearance of the petitioner. If the petitioner adopts dilatory tactics, the trial Court can insist upon the petitioner to be present before the Court.

sd/
ASSISTANT REGISTRAR(CO)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

sms

To

1. The Judicial Magistrate Court - 1,
Udumalpet.

2.Thro' The Chief Judicial Magistrate,
Coimbatore

+2 CC to MR. S.Thirumavalavan Advocate. SR.NO. 57393, 57394

+1 CC to MR. N.Umapathi Advocate. SR.NO. 57425

CrI.O.P.Nos.19515 & 19516 of 2015
and
M.P.Nos.1 & 1 of 2015

CO-KSJ
JD 03/11/2015