

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2015

CORAM

The Hon'ble Mr. Justice R.S.Ramanathan

Crl.O.P.Nos.14409 and 14415 of 2014
and M.P.Nos.1, 1 of 2014

R.Munirathinam ...Petitioner in both Crl.O.Ps
vs.
B.Usharani ...Respondent in both Crl.O.Ps.

Criminal Original Petitions filed under Section 482 of the Criminal Procedure Code praying to call for the records relating to the orders dated 14.05.2014 made in C.M.P.Nos.1639 and 1636 of 2014 in S.T.C.Nos.204 and 205 of 2013 respectively, on the file of the Judicial Magistrate No.4, Salem and set aside the same.

For Petitioner : Mr.A.Thiyagarajan
For Respondent : M/s.S.Sathia Chandran
R.Gobika

C O M M O N O R D E R

These petitions have been filed to set aside the orders dated 14.05.2014 made in C.M.P.Nos.1639 and 1636 of 2014 in S.T.C.Nos.204 and 205 of 2013 respectively, on the file of the Judicial Magistrate No.4, Salem.

2. The petitioner is the accused in the above said cases. The respondent/complainant filed the above cases under Section 138 of the Negotiable Instruments Act, 1881 stating that the petitioner has issued two cheques for Rs.5,50,000/- each dated 10.03.2012 and 25.03.2012 respectively and the same were dishonoured, when presented for collection and after issuing notice, the petitioner did not make payment and therefore, he has committed the offence under Section 138 of the Negotiable Instruments Act. The respondent/complainant examined herself as PW1 and on the side of the petitioner, one Rathinam, Sub-Inspector of Police was examined as DW1 and she has given evidence in support of the petitioner. Thereafter, the petitioner filed petitions in Crl.M.P.Nos.1639 and 1636 of 2014 for recalling PW1 and the same was dismissed and aggrieved by the same, the present petitions have been filed.

3. It is submitted by the learned counsel for the petitioner that the lower Court, without going into the merits of the case, dismissed the applications on the ground that respondent evidence was closed and without filing application to reopen the case, the application filed for recalling PW1 was not maintainable and therefore, the order of the Lower Court is liable to be set aside and one more chance has to be given to the petitioner. The learned counsel for the petitioner also submitted that having regard to the evidence of PW1, some questions were to be asked and only for that purpose, the application was filed and if the petitioner is deprived of cross-examining PW1, with respect to the evidence of DW1, the petitioner would be seriously prejudiced.

4. I am unable to accept the contention of the learned counsel for the petitioner. When PW1 was examined, she admitted that she gave a complaint against the petitioner before the Commissioner of Police, Salem and also before the Inspector of Police, Annathanapatti Police Station. She also admitted that CCB, Salem conducted enquiry on the complaint given by her and the enquiry was earlier to the cheque given by the petitioner. DW1 stated in the chief examination that the respondent gave a complaint and in respect of that complaint, the matter was enquired into and in Annathanapatti Police Station, the petitioner agreed to pay Rs.3,50,000/- and when the case was enquired into in the office of the Deputy Commissioner of Police, Salem, it was agreed that Rs.50,000/- was paid to the respondent and for the remaining sum of Rs.16,00,000/-, cheque dated 22.02.2012 for Rs.3,50,000/- and cheque dated 10.03.2012 for Rs.5,50,000/-, cheque dated 25.03.2012 for Rs.5,50,000/- and cheque dated 31.03.2012 for Rs.1,50,000/- was agreed to be given by the petitioner and both parties compromised and the respondent requested the police not to take any further action on her complaint.

5. Therefore, having regard to the statement of PW1 in her evidence that she gave the complaint and enquiry was conducted in the office of the CCB, Salem and DW1 has stated that parties agreed to receive cheques and the matter was settled, no purpose would be achieved by recalling and reopening the evidence of PW1. It is seen from the examination of DW1 that DW1 did not state that cheque dated 10.03.2012 for Rs.5,50,000/- which is the subject matter of STC.No.204/2013 was given in the police station. It is the specific case of the petitioner that cheque was obtained in the police station and DW1 did not state that the cheque was given in the police station and DW1 only stated that the parties agreed to receive Rs.16 lakhs by four cheques and on that basis, the complaint was closed. Hence, there is no valid reason given by the petitioner to reopen or recall PW1.

6. I do not find any reason to interfere with the order of the lower Court. Hence, these criminal original petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

jvm

To

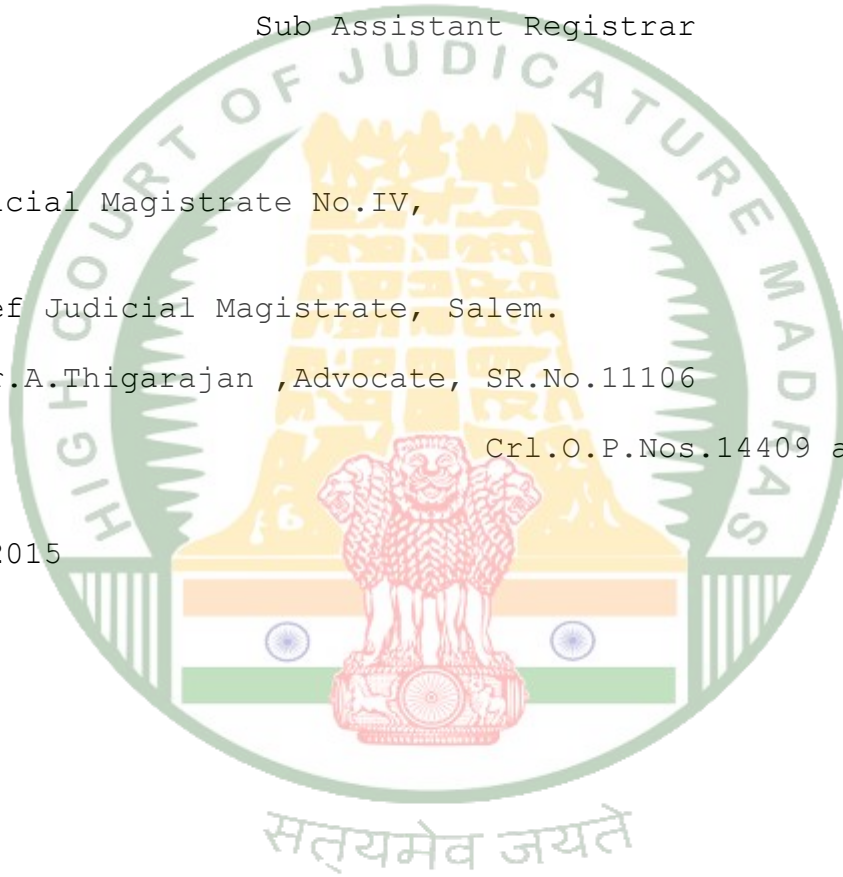
1.The Judicial Magistrate No.IV,
Salem.

2.The Chief Judicial Magistrate, Salem.

1 cc to Mr.A.Thigarajan ,Advocate, SR.No.11106

Cr1.O.P.Nos.14409 and 14415 of 2014

gj(co)
pmk.24.3.2015



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