

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.09.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP.No.23222 of 2015

and

M.P.Nos.1 & 2 of 2015

K.Rajendran .. Petitioner/Accused  
Vs  
G.Gunasundari .. Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.5511 of 2014 on the file of Fast Track Court III, Saidapet, Chennai and quash the same.

For Petitioner : Mr.K.Gajendiran

ORDER

This petition is filed to quash the proceedings in C.C.No.5511 of 2014 on the file of Fast Track Court III, Saidapet, Chennai.

2. Heard the learned counsel for the petitioner.

3. It is the case of the complainant that the accused borrowed a sum of Rs.25 lakhs on 15.07.2011, in discharge of which, he gave a cheque dated 31.01.2014 for Rs.30 lakhs with interest, which when presented was returned unpaid for the reason "funds insufficient". Thereafter, the complainant issued a statutory notice dated 18.02.2014, which was not received by the accused and it was returned to the complainant. Thereafter, the complainant filed a complaint on 20.03.2014. Challenging which, the accused is before this Court.

4. Learned counsel appearing for the petitioner/accused submits that the impugned cheque does not relate to the period of 2014 and that it was the very old cheque of the year 2005. In support of his argument, the accused has obtained a letter dated 08.09.2015 from his Bank, in which, it is stated as follows:

"With reference to the above, we wish to inform you that the cheque book with the Serial No.495071 was issued at our branch before 2005 and the details such as date of issue of the cheque book, date of taken delivery of the cheque book were not available with us we do not have old records prior to 2005. We further wish to

inform you that as per RBI directions all our customers were informed to return the old cheque books and CTS cheque books were issued to them."

5. In the considered opinion of this Court, the cheque was not returned on the ground that it was a old cheque. But, it was returned for insufficiency of funds. In an application under Section 482 of Cr.P.C., this Court cannot give a finding based on the letter dated 08.09.2015 that has been obtained by the accused from his Bank.

6. The learned counsel appearing for the petitioner/accused further submits that the date of statutory notice is 18.02.2014 and it was dispatched by the post office on 19.02.2014. But, it was returned back to the complainant only on 23.03.2014. But whereas the complainant has filed the complaint on 20.03.2014 even before the receipt of returned cover. In support of his argument, the learned counsel appearing for the petitioner/accused produced photo copy of the envelope, which bares two seals, which are not very clear.

7. In the considered opinion of this Court, the complainant should have to be confronted with whilst in the witness box and it is not a document of sterling character for this Court to give a finding in a quash application. The Hon'ble Supreme Court in the case of S.Krishnamoorthy Vs. Chellammal reported in 2015(4) SCALE 371 has held that this Court cannot make upon the disputed question of fact in a prosecution under Section 138 of the Negotiable Instruments Act. In view of the law laid down by the Hon'ble Supreme Court, this Criminal Original Petition is dismissed with liberty to the petitioner/accused to raise all points before the trial Court. Consequently, connected miscellaneous petition is closed.

vsm

s/d-

Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

To

1. The Metropolitan Magistrate,  
Fast Track Court III, Saidapet, Chennai-15.
2. do through the Chief Metropolitan Magistrate,  
Egmore, Chennai.

gr(co)  
prk6/10

Cr1.OP No.23222 of 2015