

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

CrI.O.P. No.21527 of 2009

and

M.P.No1 of 2009

M/s.Om Sakthi Real Agencies,
rep. by its proprietor S.Sekar,
No.87, Lenin Street,
Kuyavarpalayam,
Pondicherry - 605 013.

... Petitioner

vs.

Vishual Technologies
rep. by its proprietor,
R.Ravichandran,
No.6, 1st Floor, Sun Plaza,
No.19, G.N.Chetty Street,
T.Nagar, Chennai-5

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for the records in C.C.No.11828 of 2009 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioner : Mr.K.Sukumaran

For Respondent : No appearance

O R D E R

The accused in C.C.No.11828 of 2009 on the file of XVIII Metropolitan Magistrate, Saidapet, Chennai is the petitioner.

2. The respondent filed the above complaint under section 138 of the Negotiable Instruments Act against the petitioner and the petitioner has filed this petition to quash the same.

3. It is submitted by the learned counsel for the petitioner that there was no valid statutory notice issued by the respondent/complainant and in the notice issued by the complainant, no amount payable under the cheque was mentioned and demand of Rs.75,40,000/- was made and therefore, in the absence of stating the cheque amount in the notice and demand of the said amount from the accused, there is no compliance of the statutory provisions. He

also submitted that as per the notice, the petitioner was directed to repay the amount within a period of fortnight and as per clause (c) of the proviso to section 138 of the N.I.Act, 15 days clear notice must be given and fortnight only means 14 days and as per the New Lexicon Webster's Dictionary of the English Language, "fortnight" means a continuous period of two weeks. He also submitted that the respondent has impleaded the proprietary concern and as per the judgment of this court reported in 2010 (2) MWN (Cr.) DCC 72 in the matter of Nivi Knit Fashions Vs. N.Rajkumar held that prosecution as against proprietary concern is not maintainable and only the proprietor can be prosecuted. On these grounds, he submitted that the complaint is liable to be quashed.

4. It is seen from the orders passed by this Court that private notice was ordered to the respondent/complainant and that was returned as unserved and notice was permitted to be served on the counsel who is appearing for the complainant/respondent before the trial Court and the said counsel also refused to receive the same. Therefore, the petitioner was permitted to take paper publication and paper publication was effected and the name of the respondent/complainant was printed in the cause list and there is no representation for the respondent/complainant today. Therefore, the respondent is set ex-parte.

5. It is seen from the statutory notice that the amount payable under the Cheque No.230051 dated 30.11.2005 was not mentioned and there was a demand for a sum of Rs.75,40,000/- due and payable by the petitioner. Further, the petitioner was directed to pay the amount within a fortnight. As per the judgment of the Hon'ble Supreme Court reported in 2007 (5) CTC 876 in the matter of Rahul Builders Vs. Arihant Fertilizers & Chemical and another, notice without specifying the amount due under the dishonoured cheque is not a proper notice and the judgments reported in 2000 (2) SCC 380 in the matter of Suman Sethi v. Ajay K. Churiwal and 2003 (4) CTC 252 in the matter of Indira, K.R. v. Dr.G.Adinarayana were considered by the Hon'ble Supreme Court. In this case, as stated supra, in the notice, there was no whisper about the amount payable under the dishonoured cheque and there was a demand of Rs.75,40,000/-. It may be that the cheque was issued for the said amount. Further, in the absence of stating cheque amount in the notice, it cannot be stated that there was proper compliance of notice as per section 138 of the N.I.Act and as per the judgment of the Hon'ble Supreme Court referred to above. In the very same judgment, it has been held that when the statute prescribes for service of notice specifying a particular period, it should be expressly stated. In this case, in the notice fortnight time was given. Therefore, that was also not in compliance of the provisions of section 138 of the N.I.Act.

6.Hence, the petition is allowed and the case in C.C.No.11828 of 2009 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai, is quashed. The connected Miscellaneous Petition is closed.

asvm

s/d-

Assistant Registrar(CS-III)

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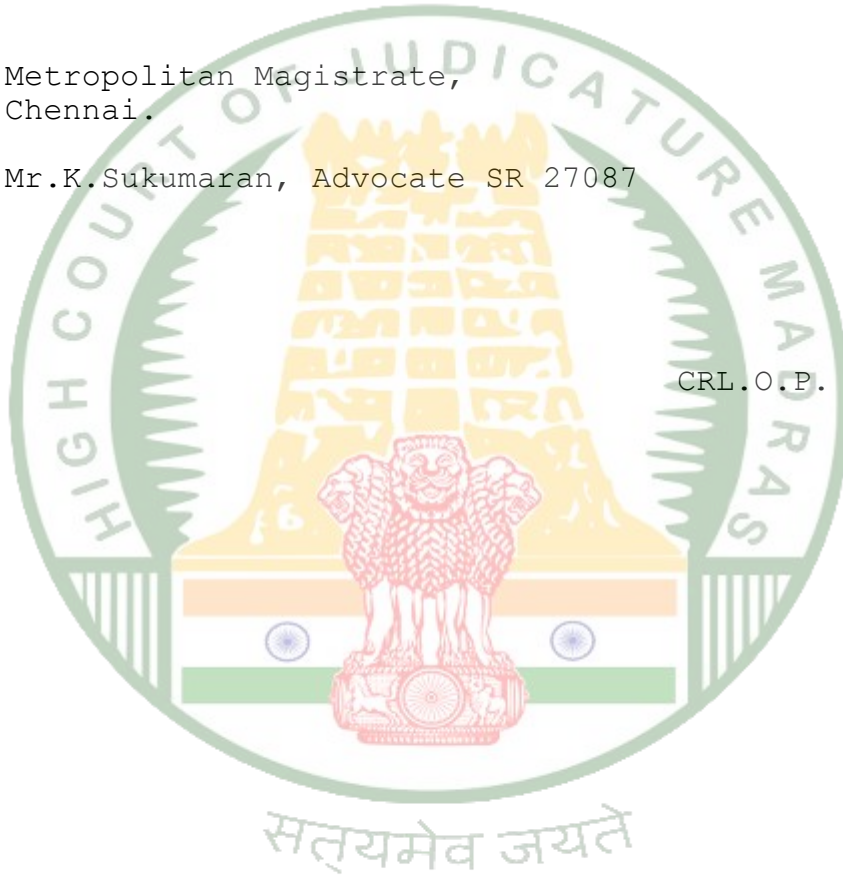
Sub-Assistant Registrar

To

The XVIII Metropolitan Magistrate,
Saidapet, Chennai.

+ 1 cc to Mr.K.Sukumaran, Advocate SR 27087

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