

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.OP No.25639 of 2014
and
M.P.Nos.1 and 3 of 2014

S.Karthikeyan

...Petitioner

Vs

Pappammal

...Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in STC No.639 of 2013 on the file of the Judicial Magistrate, Arakkonam, Vellore District and quash the same.

For Petitioner : Mr.R.Bharanidharan

For Respondent : Mr.K.Palaniswamy

O R D E R

This petition has been filed challenging the prosecution in STC No.639 of 2013 launched by the respondent herein for an offence under Section 138 of the Negotiable Instruments Act.

2. It is the case of the respondent/complainant that this petitioner/accused had borrowed a sum of Rs.3,33,000/- on 01.07.2013 and had issued a cheque for the said amount, which when presented, was returned for "insufficiency of funds." The respondent issued a statutory notice dated 14.08.2013 and since the petitioner/accused did not return the amount, the prosecution has been launched.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

4. Learned counsel for the petitioner submits that there are some errors in the amount of the cheque in the sworn statement

that has been recorded by the learned Magistrate. This Court perused the sworn statement and found that the respondent/complainant is an unlettered lady and she has affixed her Left Thumb Impression in the sworn statement. Further, the complaint clearly discloses the details of the cheque and the amount, and error in the sworn statement cannot amount to vitiating the entire prosecution.

5. Mr.R.Karthikeyan, learned counsel further submitted that the son-in-law of the respondent/complainant has lodged a complaint with the Arakkonam Town Police Station in respect of the same transaction, for which a case in Cr.No.1624 of 2013 under Section 406 IPC has been registered. The Hon'ble Supreme Court in Dashrath Rupsingh Rathod vs. State of Maharashtra [2014(4) CTC 666] has held that a person can be prosecuted both under Section 138 of the Negotiable Instruments Act as well for offences under IPC and therefore, this ground cannot be pressed into service for quashing the complaint under Section 138 of the Negotiable Instruments Act.

6.Lastly, Mr.R.Karthikeyan, learned counsel further contended that the respondent/complainant had issued another notice dated 16.10.2013 for the same transaction. This Court perused the notice and found that in the said notice, the respondent/complainant has made a demand for interest and payment of the amount and that is not a statutory notice that is required to be issued under Section 138 of the Negotiable Instruments Act. The petitioner/accused can ignore the said notice and that will not have any bearing on the private complaint under Section 156(3) Cr.P.C.

In the result, this quash petition is devoid of merits and the same is dismissed. Whatever is observed above, is only for the limited extent of deciding this quash petition and all defences are open to the petitioner/accused and the learned Judicial Magistrate shall consider the same without in any manner being influenced by what is stated above. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

gms

To

1. Judicial Magistrate,
Arakkonam, Vellore District.

2.The Public Prosecutor,
High Court, Madras.

1 CC to Mr.K.Palaniswamy, Advocate SR.No. 46642

Cr1.OP No.25639 of 2014

ALA(CO)
PSI (14.09.2015)



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