

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2015

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Cr1.O.P.No.26181 of 2015

Ponmaran

... Petitioner

.Vs.

M/s.Raj Trading Corporation,
A Proprietrix Concern,
Having office at No.304,
Monarc Apartment,
PRP Garden, Peelamedu,
Coimbatore - 641 004
rep. by the Manager,
Mr.A.Ibrahim

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C.,
seeking to call for the records in S.T.C.No.6339 of 2014 on the
file of the Judicial Magistrate, Perundurai in so far as the
petitioner/accused is concerned and to quash the same.

For Petitioner : Mr.S.Kaithamalai Kumaran

For Respondent : Mr.C.Emalias
Additional Public Prosecutor

O R D E R

This petition is filed seeking to call for the records in
S.T.C.No.6339 of 2014 on the file of the Judicial Magistrate,
Perundurai in so far as the petitioner/accused is concerned and
to quash the same.

2. It is the case of the petitioner that he has been
arrayed as an accused in the private complaint given by the
respondent in STC No.6339 of 2014 on the file of the Judicial
Magistrate, Perundurai for the alleged offence under Section 138

of the N.I. Act. The Complainant firm is a proprietrrix concern dealing with all kinds of Hardware and Tools, machineries, SS pipes and other related materials. It is the case of the complainant that the petitioner is a regular customer with the complainant and used to purchase goods related with construction for the past 10 years and in the course of business, the petitioner is due a sum of Rs.2,45,000/-. On repeated demands by the complainant, the accused is said to have issued three cheques drawn on ICICI Bank, Perundurai Branch with the following particulars: (a) Cheque No.106855, dated 19.04.2014 for a sum of Rs.1,00,000/- (b) Cheque No.106856, drawn on 17.05.2014 for a sum of Rs.75,000/- and (c) Cheque No.106857, dated 31.05.2014 for a sum of Rs.70,000/-. It is the further case of the complainant that those cheques were presented on 28.06.2014 in Punjab and Sind Bank, Coimbatore Main Branch. Those cheques were returned on 30.06.2014 with an endorsement 'funds insufficient'. Though legal notice was issued on 07.07.2014 under Sections 138 and 142 of Negotiable Instruments Act calling upon the petitioner to pay the cheque amount, the petitioner did not repay the amount. The said notice is said to have been served on the accused on 09.07.2014. As no reply was issued and the amount was not repaid, the complaint was filed in accordance with Sections 138 and 142 of N.I. Act. The petitioner has also stated in the affidavit that one Abimaran is the Proprietor of Abi Engineering Erectors.

3. Heard both sides.

4. Learned counsel for the petitioner would submit that a legal notice was issued in the name of one Abimaran, Proprietor of Abi Engineering Erectors, whereas, the actual name of the Proprietor of Abi Engineering Erectors is Ponmaran. He would contend that since the notice as contemplated under the Act is not served on the proper person, the complaint of the respondent/complainant is not maintainable.

5. The present petition is filed only on the ground that statutory notice was not served on the proper person. Notice was issued in the name of Abimaran, Proprietor of Abi Engineering Erectors and not in the name of Ponmaran, who is the actual Proprietor of Abi Engineering Erectors. But, the petitioner himself has admitted in his affidavit that the name of the business concern is only Abi Engineering Erectors, which name was mentioned in the statutory notice sent by the complainant. In my considered opinion, the ground raised by the

learned counsel for the petitioner definitely will not serve as a ground for quashing the complaint. The submission made by the learned counsel for the petitioner at the maximum may be his defence in the trial. Hence, I am not inclined to quash the complaint.

Hence, this Criminal Original Petition stands dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To :

- 1.The Judicial Magistrate,
Perundurai.
- 2.The Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.61284

CrI.O.P.No.26181 of 2015

TM(CO)
CA(08/12/2015)

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