

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.06.2015

DELIVERED ON : 01.07.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.22438 of 2010  
and M.P.No.1 of 2010

Gunappolu

.. Petitioner

Vs

A.Mahadevan

.. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the entire records relating to the case in C.C.No.9020 of 2004 on the file of the XVII Metropolitan Magistrate at Saidapet, Chennai and quash the same.

For Petitioner Mr.S.Xavier Felix

For respondent M/s Sai Bharath and Ilan Associates

ORDER

This petition has been filed to call for the entire records relating to the case in C.C.No.9020 of 2004 on the file of the XVII Metropolitan Magistrate at Saidapet, Chennai and quash the same.

2. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent.

3. For the sake of convenience, the parties will be referred to as complainant and accused.

4. It is the case of the complainant that, he is trading in edible oil and in the course of his business, the accused herein had taken a loan of Rs.1,65,000/- on 30.09.2004 and towards repayment, two cheques dated 30.09.2004 for Rs.90,000/- and Rs.75,000/- were issued, which when presented were dishonoured, resulting in the complainant issuing a statutory notice on 30.10.2004 to the accused and on the failure of the accused to comply with the demand, the impugned complaint was lodged before the XVII Metropolitan Magistrate, Saidapet, which was taken on file as C.C.No.9020 of 2004.

5. Mr.S.Xavier Felix, learned counsel for the accused submitted that, the petitioner who is a second accused in the complaint had not signed the impugned cheques and that it was signed by one Padmanabhan, to whom the complainant had issued the statutory notice under Section 138 of the Negotiable Instruments Act, but who was not arrayed as an accused in the complaint. The learned counsel produced a photo stat copy of the cheques and also the pan card of Padmanabhan and requested this Court to compare the signatures found therein for the purpose of quashing the prosecution.

6. Per contra, the learned counsel for the complainant submitted that, this Court in exercise of the powers under Section 482 Cr.P.C cannot give a finding on disputed questions of fact which has to be decided only in a regular trial.

7. Mr.S.Xavier Felix, learned counsel further contended that the complaint excluding Padmanabhan cannot be maintained on the ground that, the complainant cannot pick and choose the persons for arraying them as accused.

8. This Court gave anxious consideration to the rival submissions. It is seen that the impugned cheques were issued by a partnership firm by name M/s Swamees, which has been arrayed as the first accused in the complaint. On a perusal of the impugned cheques, the signature found therein is not decipherable. In other words, from the signature one cannot predicate the name of person who had signed it. The complainant has averred in para 3 of the complaint that, the impugned cheques were issued through the petitioner/second accused.

9. In para 6 of the complaint it is stated that this petitioner/second accused is a partner in the first accused firm and that she was actively engaged in the day to day affairs and was responsible for the affairs of the firm. As rightly contended by the learned counsel for the complainant, this Court cannot go into the disputed questions of fact and the same has to be left for the trial Court to decide in the light of the law laid down by the Supreme Court recently in S.Krishnamoorthy vs. Chellammal [(2015) 4 Scale 371].

10. Mr.S.Xavier Felix, learned counsel placed reliance upon the judgment of the Supreme Court in M.D.Thomas vs. M/s Jaleel and another [(2009) 14 SCC 398] for the proposition that, no notice was served on the petitioner. The said ruling of the Supreme Court is after a full fledged trial, but whereas here the accused is seeking to quash the prosecution under Section 482 Cr.P.C. In the complaint it is stated that the lawyer's notice was not received by the accused and it was returned on 05.11.2004. Under such circumstances, constructive service of notice is being pleaded by the complainant and he should be give an opportunity to prove his case before the trial Court.

In the result, this Court holds that this is not a fit case to quash the prosecution at the threshold and accordingly, this petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gms

To

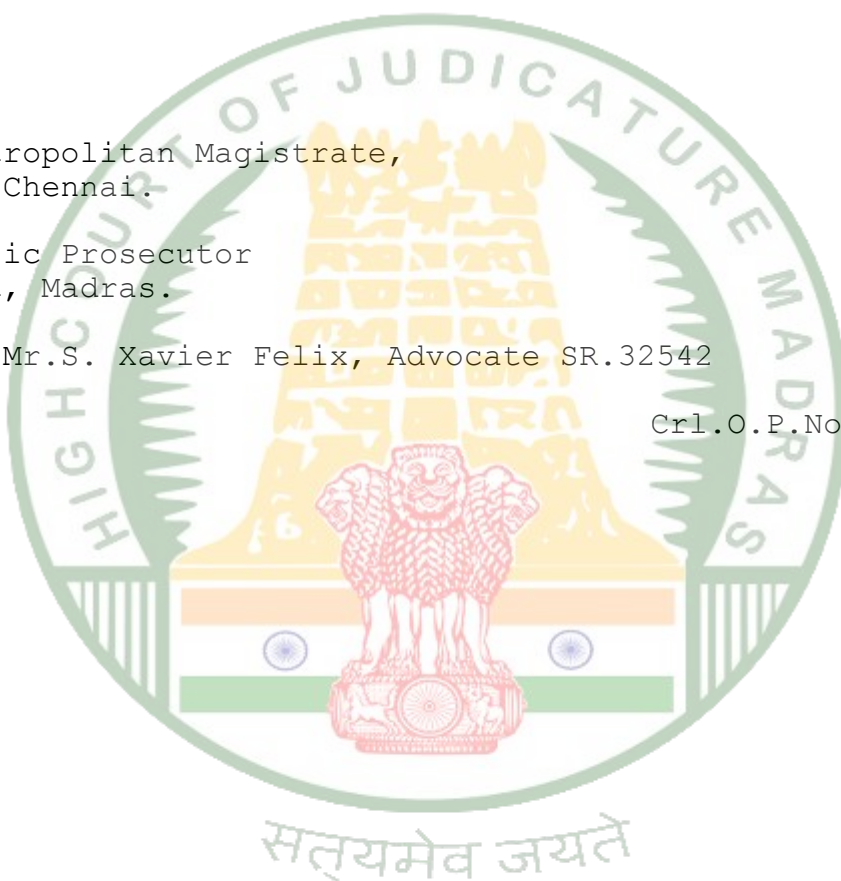
1.XVII Metropolitan Magistrate,  
Saidapet, Chennai.

2.The Public Prosecutor  
High Court, Madras.

+ 1 cc to Mr.S. Xavier Felix, Advocate SR.32542

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