

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.OP No.8739 of 2015
& M.P.No.1 of 2015

S.Balamurugan

.. Petitioner

Vs

N.Suresh

.. Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertainingn to C.C.NO.529 of 2013 on the file of the learned Judicial Magistrate, Thiruvavarur and quash the same.

For Petitioner :Mr.P.Vijendran

ORDER

This is a petition to quash the proceedings filed by the respondent/complainant under Section 138 of Negotiable Instruments Act against the petitioner/accused.

2. The learned counsel for the petitioner submits that the petitioner and the respondent were partners in a T.V.Company and they had fallen apart. Thereafter, it is alleged that the respondent/complainant had misused the cheque belonging to the petitioner and has presented the same for clearance. The petitioner had given instructions to the bank to stop payment of the cheque. Despite that, the respondent/complainant has lodged the present complaint, based on which cognizance has been taken by the learned Judicial Magistrate, Thiruvavarur under Section 138 of Negotiable Instruments Act. The learned counsel for the petitioner submits that the cheque has been lost by the petitioner and it had come into unlawful possession of the respondent/complainant, which he has misused the same.

3. Mr.P.Vijendran, the learned counsel also fairly brought to my notice the recent judgment of the Supreme Court in HMT Watches Ltd., vs. M.A.Abida and another reported in CDJ 2015 SC 233, wherein the Supreme Court stated as follows:

"14. For the reasons as discussed above, we find that the High Court has committed grave error of law in quashing the criminal complaints filed by the appellant in respect of

offence punishable under Section 138 of the N.I.Act, in exercise of powers under Section 482 of the Code of Criminal Procedure by accepting factual defences of the accused which were disputed ones. Such defences, if taken before trial court, after recording of the evidence, can be better appreciated."

4. Relying upon the aforesaid judgment of the Supreme Court, this Criminal Original Petition is dismissed with liberty to the petitioner to raise all the factual defences before the trial court. Consequently, the connected Miscellaneous Petition is closed.

ajr

s/d-
Assistant Registrar(V)

True Copy

Sub-Assistant Registrar

To

1. Judicial Magistrate, Thiruvarur

2.The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr.P.Vijendran, Advocate SR 19098

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