

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2015

CORAM

The Hon'ble Mr. Justice R.S.Ramanathan

CrI.O.P.No.16081 of 2009

and

M.P.No.1 of 2009

S.Radhakrishnan

...Petitioner/Accused

vs.

M/s. Fenner (India) Ltd.
Textiles Division,
rep. by P.V.Rajagopalan

...Respondent/Complainant

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to call for records relating to the complaint in C.C.No.378 of 2006, on the file of Judicial Magistrate No.II, Salem, and to quash the same.

For Petitioner : Mr.S.N.Arunkumar
For Respondent : No appearance

O R D E R

The petitioner is the accused in C.C.No.378 of 2006, on the file of Judicial Magistrate No.II, Salem.

2. The respondent/complainant filed a private complaint under Section 200 Cr.P.C. against the petitioner, stating that the petitioner has committed offence under Sections 417, 420, 467, 468 and 471 IPC. The learned Magistrate has taken cognizance of the said private complaint, and this Petition is filed to quash the same.

3. The learned counsel appearing for the petitioner has submitted that, admittedly, the respondent/complainant filed C.C.No.62 of 1998, on the file of Judicial Magistrate, No.II, Salem, against the petitioner, represented by Proprietor of Rajalakshmi Agencies, stating that the petitioner issued three cheques, each for Rs.1,00,000/-, towards the liability payable by him, and those cheques were dishonoured when presented for realization, and after issuing statutory notice, filed the case in C.C.No.62 of 1998 against the petitioner for offence under Section 138 of Negotiable Instruments Act, 1881 (N.I. Act) and that case ended in acquittal. The learned counsel, therefore, submitted that the present complaint in C.C.No.378 of 2006 is also based on the same set of facts, and therefore, the same is liable to be dismissed.

4. I am unable to accept the contentions of the learned counsel appearing for the petitioner. No doubt, it is true that the respondent/complainant filed case in C.C.No.62 of 1998, against the petitioner for offence under Section 138 N.I. Act, stating that the petitioner issued three cheques, dated 01.08.1997, 10.08.1997 and 20.08.1997, each for Rs.1,00,000/-, and when those cheques were presented, got dishonoured on account of insufficient funds. Hence, the respondent initiated prosecution against the petitioner for offence under Section 138 N.I. Act. However, during trial, it was contended by the petitioner that those cheques were not issued by him and it was issued by one S.Venkatesan, the Proprietor of Rajalakshmi Agencies. Therefore, the Trial Court held that cheques were drawn by one S.Venkatesan, and not by the petitioner, and prosecution can be launched only against the Drawer of the cheque and not against any other person, and on that ground, the complaint filed by the respondent in C.C.No.62 of 1998, was dismissed.

5. In the present case in C.C.No.378 of 2006, the respondent/complainant stated all these facts and also stated that the cheques were issued by the petitioner representing himself as Account Holder of those accounts and he has signed the cheques, as if, he was the Account Holder, and cheated the respondent and therefore, the respondent has made out the case.

6. Therefore, according to me, earlier complaint in C.C.No.62 of 1998 was filed under Section 138 N.I. Act on the ground that the petitioner issued cheques and complaint was dismissed holding that the Signatory to the cheque or Drawer of the cheque was not the petitioner, and one S.Venkatesan, who was the Proprietor of Rajalakshmi Agencies was the drawer of the cheque, and on that ground, the said complaint was dismissed. In the present complaint, it has been stated that the petitioner misrepresented or impersonated himself as Proprietor of the said Rajalakshmi Agencies and signed cheques, as if, he was the Account Holder, and thereby, defrauded the respondent. Therefore, the cause of action in both complaints are different, and hence, the dismissal of the earlier case in C.C.No.62 of 1998 will not operate as bar under Article 20 of the Constitution of India.

7. In the result, the Criminal Original Petition is dismissed as being devoid of merits. Consequently, connected M.P. is closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

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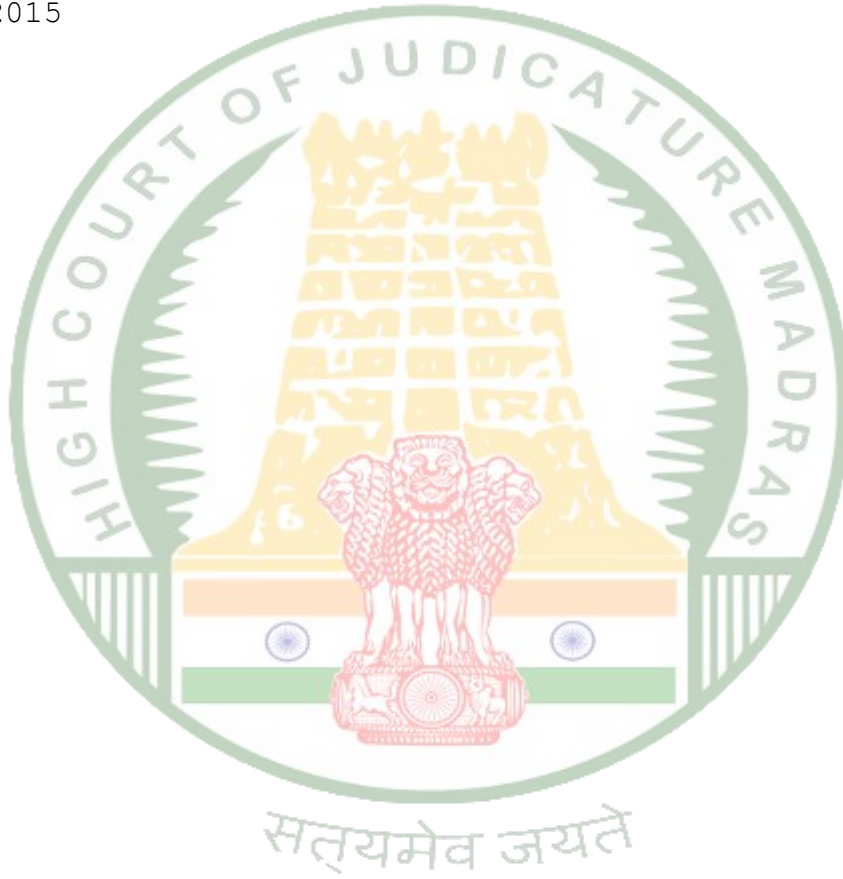
To

- 1.The Judicial Magistrate No.II, Salem.
- 2.Thro The Chief Judicial Magistrate, Salem

1 cc to Mr. S.Shankar, Advocate Sr.No.27350

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