

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

CrI.O.P. No.17240 of 2009

and

M.P.No.1 of 2009

M.Gnanasekaran

... Petitioner/Accused

vs.

M/s.Ankal Exports,
a Partnership firm doing
business at S.F.No.347,
Palladam Road, Tiruppur
rep. by its partner,
R.Manoharan.

... Respondent/Complainant.

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for the records pertaining to the complaint in S.T.C.No.465 of 2008 on the file of the Judicial Magistrate No.7, Coimbatore and quash the same.

For Petitioner : Mr.P.Anbarasan

For respondent : Mr.K.Govi Ganesan

O R D E R

The petitioner is the accused in S.T.C.No.465 of 2008 on the file of the Judicial Magistrate No.VII, Coimbatore. The respondent/complainant filed the above complaint under section 138 of the Negotiable Instruments Act and this petition is filed to quash the same.

2. It is submitted by the learned counsel for the petitioner that as per the complaint, the cheque was issued for a sum of Rs.4,50,000/- and the cheque number was 022155 drawn on State Bank of India, Mahalingapuram Branch, Chennai. Admittedly, the cheque was issued for Rs.2,50,000/- whereas the respondent/complainant demanded Rs.4,50,000/-. He further submitted that notice was not served on the petitioner and as per the copy of the lawyer's notice, notice was addressed to No.6, Palat Sankaran Street, Mahalingapuram, Chennai -34. The notice was dated 27.10.2007. The complaint was filed against the petitioner mentioning address as No.10/1, Pulal Munuswamy Street, Perambur, Chennai - 600 011. He therefore submitted that the respondent/complainant was aware that the petitioner was residing

No.6, Palat Sankaran Street, Mahalingapuram, Chennai -34, and issued statutory notice to the incorrect address. Therefore, there is no proper compliance of service. On that ground, the complaint has to be quashed. He also submitted that even in the year 1998, the account was closed and stop payment was issued to the bank and the respondent having committed theft of the cheque presented the cheque in the year 2007 and initiated prosecution to spite the petitioner. He therefore submitted that the petitioner is liable to be quashed and in similar circumstances, this Court has also quashed various cases filed by the very same respondent.

3. I am unable to accept the contention of the learned counsel for the petitioner. It is seen from the statutory notice that the notice was issued for the collection of Rs.2,50,000/-. Though in the notice it was stated that the petitioner borrowed a sum of Rs.4,50,000/-, it was specifically stated that the cheque was issued for a sum of Rs.2,50,000/- and demand was also made in this background. No doubt, in the complaint, it has been stated that the cheque was issued for a sum of Rs.4,50,000/- and as rightly submitted by the learned counsel for the respondent that it may be due to typographical error and the same cannot be considered at this stage. Another point raised by the learned counsel for the petitioner is that there was no proper notice to the petitioner. No doubt, the statutory notice dated 27.10.2007 was addressed to Palat Sankaran Street, Mahalingapuram, Chennai - 34. As per the complaint, it is stated that notice sent to the business address was returned with an endorsement "left" and the notice sent to the residential address was evaded by the petitioner and the notice was returned with an endorsement, intimation served, not claimed. Therefore, it cannot be contended that there was no proper notice. Further, submission of the learned counsel for the petitioner is that the account was closed even in the year 1998 and the cheque was a stolen cheque cannot be considered at this stage and it is for the petitioner to prove the same during trial. Another submission of the learned counsel for the petitioner that the complaint was barred by time as the complaint was filed only on 17.12.2007 and the complaint ought to have been filed earlier cannot also be accepted. As stated supra, as per the complaint, notice was returned with an endorsement "intimation served" on 13.11.2007 and therefore, the cause of action arose only after the period of 15 days from the date of service of notice and in that case, the cause of action arose only on 28.11.2007 and the complaint was filed on 17.12.2007. Hence, it is within the period of limitation. Hence, I am unable to accept the contention of the petitioner.

4. The petition is dismissed. The connected Miscellaneous Petition is closed. It is open to the petitioner to substantiate all those allegations during trial by leading evidence.

asvm

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Judicial Magistrate No.7,
Coimbatore.

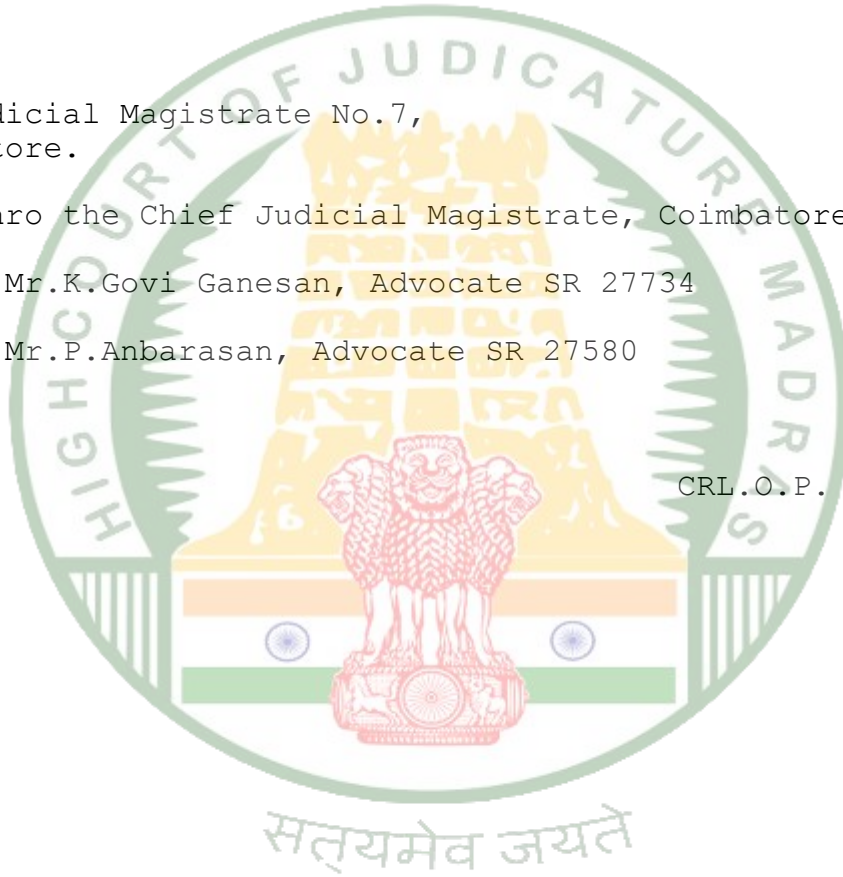
2. -d0- thro the Chief Judicial Magistrate, Coimbatore.

+ 1 cc to Mr.K.Govi Ganesan, Advocate SR 27734

+ 1 cc to Mr.P.Anbarasan, Advocate SR 27580

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