

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2015

Coram

THE HONOURABLE MR. JUSTICE R.S.RAMANATHAN

CrI.O.P.No.19479 of 2010
and
M.P.Nos.1 and 2 of 2010

P.Thangavel

..Petitioner /Accused

/vs/

M/s Mahindra & Mahindra Financial Services Ltd.,
Gateway Building, Appollo Bunder,
Mumbai 400 021.
Rep.by its Power Agent,
Mr.K.Thiyagarajan, Age 28years,
Legal Executive, No.82, 1st Floor,
Perundurai Road,
Opp.KV.Kumalan Kuttai Bus Stop (Near)
Erode-638 011. ..Respondent /Complainant

Criminal Original Petition filed under Section 482 of Criminal Procedure Code praying to call for the records relating to C.C.No.174/2010 on the file of the Judicial Magistrate No.III, Erode and quash the same.

For Petitioner :Mr.C.S.Saravanan

For Respondents :No appearance

ORDER

The petitioner is the accused in C.C.No.174 of 2010 on the file of the Judicial Magistrate No.III, Erode. The respondent filed a complaint under Section 138 of Negotiable Instruments Act and this petition is filed to quash the same.

2.It is submitted by the learned counsel appearing for the petitioner that even according to the averments made in the complaint, the car was handed over by the petitioner to the respondent towards dues payable by the petitioner and the respondent also sold the car after adjusting the sale proceeds and for the balance amount filed a complaint as if the amount was payable by the petitioner and the petitioner issued a cheque. According to him, the liability is only civil in nature and after adjusting the sale

proceeds only, the respondent/complainant can file a civil suit for realisation of the balance amount and the cheque, which was given at the time of entering hypothecation agreement, cannot be utilized for filing the complaint against the petitioner. He also submitted that even according to the complaint given by the respondent, the car was sold on 09.02.2005 and the cheque was dated 01.07.2009 and that would also prove that the complainant could not have given the cheque on the alleged date.

3.I am unable to accept the contention of the learned counsel appearing for the petitioner. It is seen from the complaint that the petitioner entered into a hire purchase agreement with the respondent and failed to make the payment and the car was sold on 09.02.2005 and after adjusting the sale proceeds towards the balance amount payable by the petitioner, a sum of Rs.1,53,450/- was due and towards that liability, the cheque was given on 01.07.2009. Whether the cheque was given at the time of entering into the loan agreement or whether the claim is time barred can be gone into only during the trial and when the specific case of the respondent/complainant was that the cheque was issued towards the balance amount payable by the petitioner, after adjusting the sale proceeds, it cannot be presumed that the cheque was issued at the time of entering into the loan agreement or the respondent has to work out his remedy through civil court. It is for the parties to let in evidence to establish their case before the trial Court. Hence, I do not find any merit in this petition and this petition is liable to be dismissed. Accordingly, the criminal original petition is dismissed. However, the trial court is directed to dispose of the case within a period of four months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.III,
Erode.

2.-Do- Thro The Chief Judicial Magistrate, Erode.

1 cc to Mr. C.S.Saravanan(Party-in-person), Advocate Sr.No.29048
Crl.O.P.No.19479 of 2010

sv(co)pmk.23.6.2015