

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Crl.O.P.No.1090 of 2016

David R.Thomas Rasol Thirumeny ...Petitioner/Accused No.1

Vs.

R.Sathish Kumar ...Respondent/Complainant

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to the proceedings in C.C.No.1666 of 2015 pending on the file of learned XVI Metropolitan Magistrate, George Town, Chennai - 600 001 and quash the same.

For Petitioner : Mr.T.S.N.Prabhakaran

O R D E R

The present petition has been filed to call for the records pertaining to the proceedings in C.C.No.1666 of 2015 pending on the file of learned XVI Metropolitan Magistrate, George Town, Chennai - 600 001 and quash the same.

2. In view of the limited order going to be passed in this petition, this Court is of the opinion that there is no need to issue notice to the respondent.

3. The respondent herein has filed a complaint stating that the petitioner borrowed a sum of Rs.2,65,000/- from him on 13.06.2015 for running business and he issued a cheque bearing No.000025 dated 13.07.2015 for a sum of Rs.2,70,000/- i.e., Rs.5,000/- towards interest. But when the respondent/ complaint deposited the said cheque with the State Bank of India, Royapuram Branch, on 28.07.2015, the same was dishonoured. The respondent/complainant also informed the same to the petitioner. The petitioner/accused made a request to the respondent/complainant to re-deposit the said cheque. On the assurance given by the petitioner/accused, the respondent/complaint again deposited the cheque on 25.08.2015 but again, the said cheque was returned on 27.08.2015 with the remarks "Funds insufficient". Thereafter, the respondent/complaint issued a statutory notice on 07.08.2015. Since the petitioner/accused has not replied to the said notice, on expiry of the statutory

period, the respondent / complainant has filed the present complaint.

4. The only submission made by the learned counsel for the petitioner is that the cheque was presented by the respondent/complainant on earlier occasion but the same was returned without being honoured. But the respondent has not chosen to file a complaint on earlier occasion. But again, he represented the cheque and purposely got it dishonoured for the purpose of filing a complaint under Section 138 of the Negotiable Instrument Act. Hence, according to the petitioner, the complaint is liable to be quashed. However, the respondent had admitted that when the cheque was returned on the first occasion, no statutory notice was issued by the respondent/complainant.

5. In my considered opinion since on the first occasion, no statutory notice was issued, the second presentation made by the respondent/complainant, cannot be a ground for quashing the complaint. Therefore, I am not inclined to entertain this petition. Hence, the criminal original petition is dismissed.

6. At this juncture, the learned counsel for the petitioner made a submission that atleast a direction may be given to the trial court viz., XVI Metropolitan Magistrate, George Town, Chennai - 600 001, to dispense with the personal appearance of the petitioner. But, I am not inclined to give any positive direction. However, the petitioner is at liberty to file an application to dispense with the personal appearance before the learned XVI Metropolitan Magistrate, George Town, Chennai - 600 001. On filing such application, the learned XVI Metropolitan Magistrate, George Town, Chennai - 600 001 is directed to consider the same and pass appropriate orders on merits.

vsi

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The XVI Metropolitan Magistrate,
George Town, Chennai - 600 001.
2. -do- thro The Chief Metropolitan Magistrate,
Chennai-1.

+ 1 cc to Mr.T.S.N.Prabhakaran, Advocate Sr 3102

KR/4/2/16

Cr1.O.P.No.1090 of 2016