

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.08.2016

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.OP.No.20827 of 2014

and M.P.No.1 of 2014

Hippolistes Fernando ...Petitioner/Accused No.4

Vs

Ramesh Kumar ...Respondent/Complainant

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records in CC.No.276 of 2014 on the file of the learned Judicial Magistrate No.VI, Coimbatore, filed by the respondent under Section 200 CrPC and to quash the proceedings in exercise of the powers of this Court under Section 482 CrPC, as an abuse of process of Court, causing injustice to the petitioner.

For Petitioner : Mr.M.Kalyanasundaram
Senior Counsel for
Mr.K.Palaniswamy

For Respondent : Mr.P.Sidharthan

O R D E R

This petition has been filed to quash the proceedings in CC.No.276 of 2014 on the file of the learned Judicial Magistrate No.VI, Coimbatore, filed by the respondent under Section 200 Cr.P.C.

2. Heard the learned counsel for the petitioner; learned counsel appearing for the respondent and perused the materials placed on record.

3. For the sake of convenience, the parties will be referred to by their name. Ramesh Kumar has filed a private complaint in C.C.No.276 of 2014 before the learned Judicial Magistrate No.VI, Coimbatore against [1] S.Murugan, [2] Vasu, [3] Malaisamy, [4] Hippolistes Fernando for offences under Section 467, 468, 471 and 474 r/w 120B IPC. Challenging which, Hippolistes Fernando is before this Court for quashing the prosecution.

4. On reading of the private complaint lodged by Ramesh Kumar, it is stated that on 07.01.2013, Ramesh Kumar lost

about 34 blank cheque leaves along with RC book and other documents near Ukkadam bus stand in Coimbatore. While so, on 06.04.2014, his employee Shanmugam happened to accidentally meet Vasu/A2 and Hippolistes Fernando/A4 in a hotel and at that time, they both seem to have told Shanmugam that they are in possession of the cheques of Ramesh Kumar, with which, they have filed a 138 Negotiable Instruments Act prosecution against Ramesh Kumar through Malaisamy/A3. Based on this statement, the present private complaint has been filed alleging that the four persons have committed the aforesaid offences.

5. Mr.Sidharthan, learned counsel appearing for Ramesh Kumar submitted that Munusamy had initiated a prosecution against Ramesh Kumar under Section 138 of Negotiable Instruments Act in respect of one of the cheques and the same is pending before the learned Judicial Magistrate, Melur.

6. Be that as it may. Merely on the strength of the statement of Shanmugam to whom Vasu/A2 and Hippolistes Fernando/A4 appears to have given a statement on 06.04.2014 without anything more, a prosecution cannot be maintained for the aforesaid offence. The filing of 138 prosecution by Malaisamy cannot lead to an inference that the cheques were manipulated by the accused, as asserted by Ramesh Kumar. It is always open to Ramesh Kumar to setup a defence in the 138 prosecution that the cheques were lost in Ukkadam bus stand and that, it has been misused by Malaisamy.

7. Under such circumstances, the present prosecution is devoid of merits and accordingly, quashed. Though Murugan, Vasu and Malaisamy are not before this Court, in the considered opinion of this Court, it will serve the interest of justice, if the entire prosecution against all the accused is quashed, without prejudice to the defence of Ramesh Kumar in the 138 prosecution that the impugned cheque therein was illegally obtained and accordingly, proceedings in CC.No.276 of 2014 on the file of the learned Judicial Magistrate No.VI, Coimbatore is quashed against all the accused. The quashment of this complaint does not mean that there is falsity in the case of Ramesh Kumar with regard to the loss of his cheques. This prosecution is quashed on the ground that the averments in the complaint does not make the alleged offence. Consequently, connected Miscellaneous Petition is closed.

gya

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Judicial Magistrate No.VI,
Coimbatore.

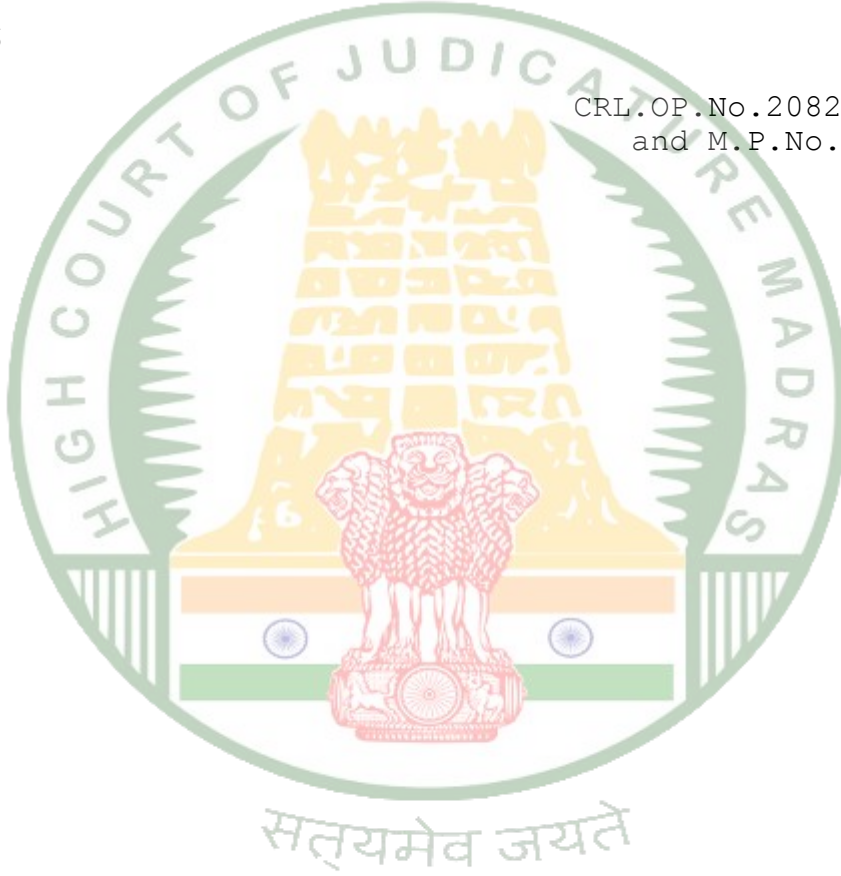
2. -do- thro ' The Chief Judicial Magistrate, Coimbatore.

+ 1 cc to Mr.K.Palaniswamy, Advocate Sr 45328

+ 1 cc to Mr.P.Sidharthan, Advocate Sr 45186

KR/29/8/16

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