

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.12.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

CRL.O.P.No.20598 of 2009

and

M.P.No.1 of 2009

1. B.Ramachandran

2. Ramasubbu ... Petitioners

- Vs -

M/s.Mukesh Finance,
Represented by Proprietor Mukesh,
No.7-8, Nallana Mudali Street,
Sowcarpet,
Chennai. ... Respondent

Prayer : Criminal Original Petition is filed under Section 482 Cr.P.C. To call for the records in connection with C.C.No.10846 of 2005, on the file of the learned III Metropolitan Magistrate, George Town, Chennai and quash the same.

For Petitioners : Mr.S.Palanivelayutham
For Respondent : No Appearance

ORDER

Invoking the provisions of Section 482 of Cr.P.C., this petition is filed by the petitioners to quash the criminal proceedings concerned in the case in C.C.No.10846 of 2005, pending against them on the file of the learned

III Metropolitan Magistrate, George Town, Chennai.

2. Obviously, the petitioners 1 and 2 are the accused 1 and 2 in the private case in C.C.No.10846 of 2005.

3. It is manifested from the records that the respondent who is a private financial institution had filed a private complaint under Section 200 of Cr.P.C., on the file of the learned III Metropolitan Magistrate, George Town, Chennai alleging that the petitioners have committed the offences under Sections 420 and 406 of I.P.C. In the complaint, the respondent has specifically stated that the 1st petitioner had approached him to sanction the hire purchase loan in respect of a vehicle bearing Reg.No.KL-51-Y-3969. It is alleged that the 2nd petitioner/accused stood as a guarantor, for proper repayment of the monthly instalments.

4. It is also alleged that both the petitioners/accused had joined together with a common intention of cheating, and dishonestly induced the complainant to sanction the hire purchase amount for the purchase of the above said vehicle. Accordingly, the respondent had sanctioned a sum of Rs.1,64,000/- plus

additional hire charges. With the petitioners had failed to repay the loan amount, he happened to file a private complaint saying that the petitioners had committed the offences punishable under Sections 420 and 406 IPC. According to the respondent, the petitioners, as on date of complaint, have to pay a sum of Rs.1,70,000/-. The learned III Metropolitan Magistrate, George Town, Chennai had taken cognizance of the offences under Sections 420, 406 and 418 read with Section 34 of IPC. Now, the petitioners have come forward with this petition under Section 482 Cr.P.C. to quash the criminal proceedings pending against them on the file of the learned III Metropolitan Magistrate, George Town, Chennai in C.C.No.10846 of 2005.

5. It is significant to note here that despite service of notice on the respondent, he has not chosen to appear and there is also no representation on his behalf.

6. The learned counsel for the petitioners has submitted that in pursuant to the hire purchase agreement in respect of purchase of vehicle bearing Reg.No.TN-51-Y-3969, the respondent had advanced a sum of Rs.1,64,000/- on 17.06.2002, for which, the second petitioner stood as a guarantor for proper repayment of the said loan amount. The

learned counsel for the petitioner has submitted that even after passing of five years the said private complaint is remaining in the initial stage and therefore, is no progress in the private complaint. Further, the learned counsel has added that the petitioners 1 and 2 have continuously been attending the Court. The respondent/complainant has not evinced any interest in get on with the trial. The petitioners alone are suffering a lot by spending huge amount from southern end to northern end only for the purpose of attending the hearing. She has also submitted that the main ingredients under Sections 406 and 420 of IPC are not made out in this case and since no prima facie case is made out, she has urged this Court to quash the criminal proceedings.

7. The learned counsel for the petitioners has also made reference to the order of this Court dated 21.08.2015 and made in CrI.O.P.No.14074 of 2008, wherein, this Court has specifically observed that during the year 2008 and 2010, hundreds of private complaints were filed by various financial institutions against borrowers in certain Courts in Chennai which came to the notice of this Court and in consequence thereof the Registry was directed to collect information from all the Courts in Chennai about the

pendency of the private complaint and list the matters for hearing. This Court had also found that the financial institutions had been abusing the process of law by lodging private complaints in respect of the matters relating to commercial and civil transactions. Therefore, on 21.08.2008, the petitions in Crl.O.P.Nos.15451 and 15981 of 2008 were quashed.

8. This Court has also specifically found that the private complaint filed by the respondent/financial institution is nothing but an abuse of process of law as well as Court and therefore, the criminal case in crime No.352 of 2008 on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai was quashed.

9. Keeping in view of the above fact, the learned counsel has submitted that since the ingredients of Sections 406 and 420 IPC are not made out, the private complaint in C.C.No.10846 of 2005, might be quashed.

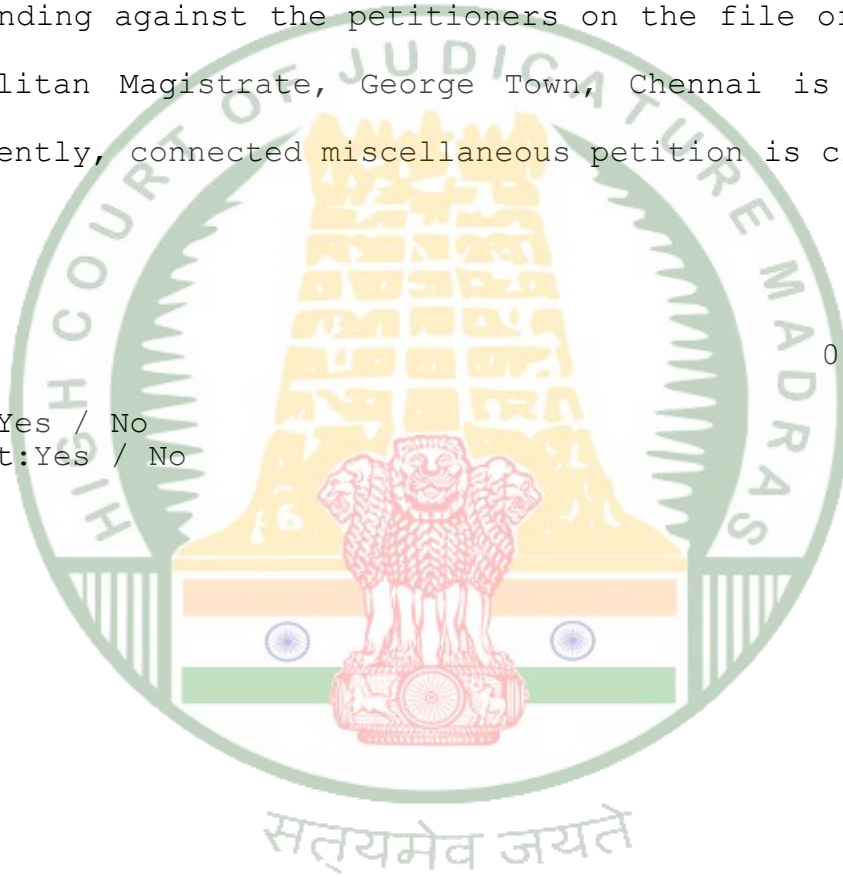
10. This Court has perused the grounds of the petition along with the relevant materials. Having regard to the facts, this Court finds that this petition is deserved to be allowed and the complaint in C.C.No.10846 of 2005

pending on the file of the learned III Metropolitan Magistrate, George Town, Chennai, is deserved to be quashed.

11. Accordingly, this Criminal Original Petition is allowed and the criminal proceedings in C.C.No.10846 of 2005 pending against the petitioners on the file of the III Metropolitan Magistrate, George Town, Chennai is quashed. Consequently, connected miscellaneous petition is closed.

08.12.2016

Index: Yes / No
Internet: Yes / No
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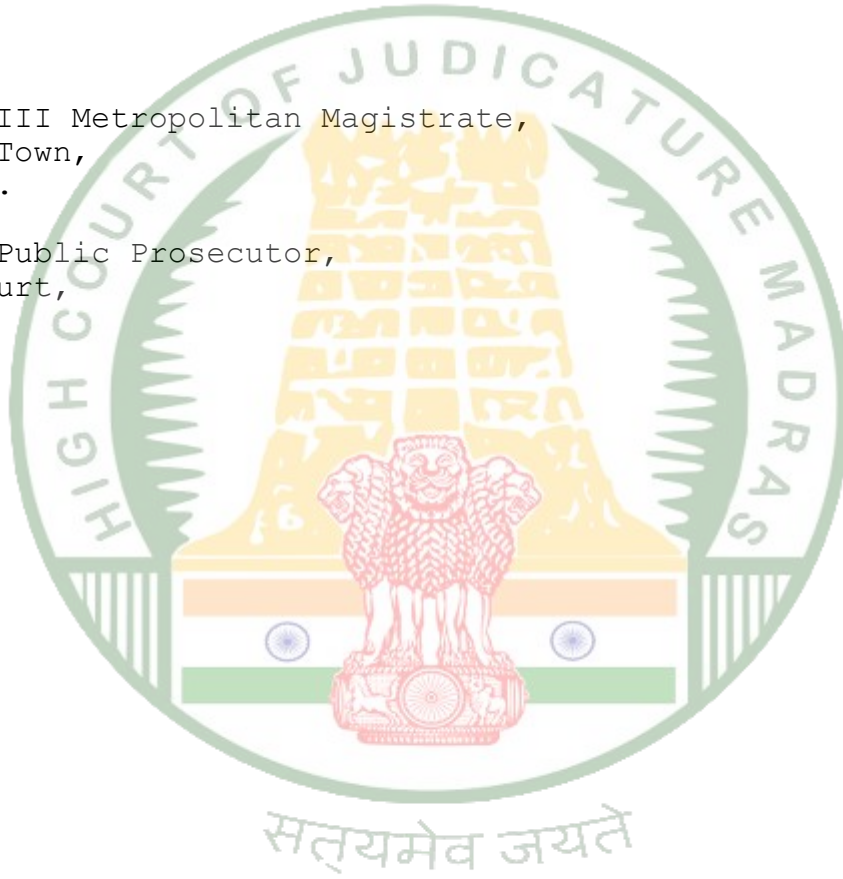


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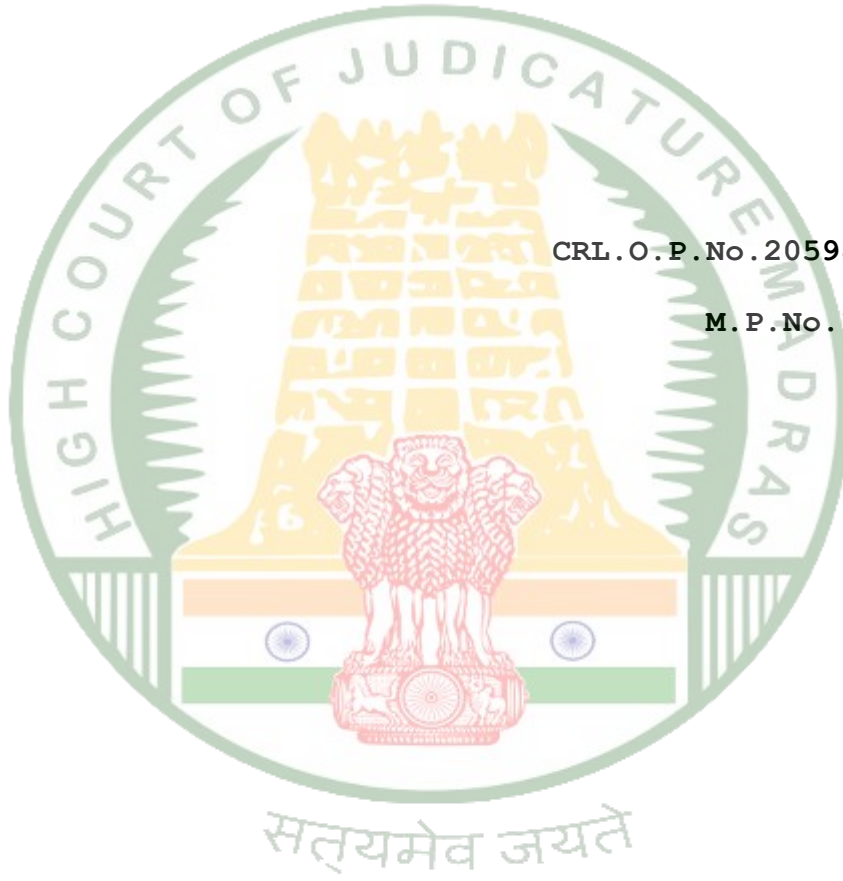
1. The III Metropolitan Magistrate,
George Town,
Chennai.

2. The Public Prosecutor,
High Court,
Madras.



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T.MATHIVANAN, J. ,



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