

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2016

CORAM

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Cr1.O.P No.5628 of 2010
and M.P.No.1 of 2010

Bishen Sharma

..Petitioner / A1

Vs.

Vijay Ganesh

..Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.S.No.215 of 2009 on the file of the learned Judicial Magistrate, Gudiyattam and quash the same.

For Petitioner : Mr.R.Karthikeyan
For Respondent : Mr.V.Karthikeyan

ORDER

This Criminal Original Petition has been filed by the first accused under Section 482 of the Code of Criminal Procedure praying to call for the records in C.C.No.215 of 2009 on the file of the learned Judicial Magistrate, Gudiyattam and quash the same.

2. Briefly the facts of the case are as follows :

(i) The petitioner / A1 is doing money lending business. The respondent / complainant was introduced to the petitioner / A1 by his father-in-law. He took a loan of Rs.50,000/- from the petitioner and gave a blank signed cheque as a security for the same. The respondent repaid the entire loan amount but the petitioner / A1 did not return the blank cheque, saying that the loan obtained by the father-in-law of the respondent / complainant is also to be settled.

(ii) The petitioner / A1 colluding with his friend-A2 had clandestinely filled the cheque for Rs.6,00,000/- and filed a case under Section 138 of the Negotiable Instruments Act against the respondent / complainant through A2. The respondent preferred a complaint before the police. Since A2 represented to the police that already he filed a case under Section 138 of Negotiable Instruments Act, the police instructed to settle the issue in the Court. Therefore, the respondent preferred complaint against the petitioner / A1 and A2 for the offences under Sections 120(B), 406, 465 and 471

IPC

3. The learned counsel appearing for the petitioner contends that no offence as alleged is made out either from the complaint or from the sworn statement; that the complaint is frivolous one and has been given as a counter blast to the case filed by A2 under Section 138 of Negotiable Instruments Act and therefore, the same is to be quashed.

4. Though the learned counsel appearing for the respondent took several adjournments, he has not advanced his arguments.

5. It is an admitted fact that the respondent / complainant admitted his signature in the cheque. A2 filed a case under Section 138 of Negotiable Instruments Act for dishonour of the said cheque. The contention of the respondent / complainant is that he gave a blank signed cheque to the petitioner / A1 only as a security to the loan of Rs.50,000/- obtained by him and even after repayment, the same was not returned and the same was used in the case filed under Section 138 of Negotiable Instruments Act against him. The above defence is to be taken and established in the case filed against him under Section 138 of Negotiable Instruments Act.

6. The case against the petitioner in C.C.No.215 of 2009 on the file of the Judicial Magistrate, Gudiyattam for the offences under Section 120(B), 406, 465 and 471 IPC is nothing but a counter blast to the case filed against the respondent / complainant for the offence under Section 138 of Negotiable Instruments Act by A2.

7. This Court perused carefully the complaint as well as the sworn statements of the witnesses. This Court is of the considered view that no offence as alleged by the respondent / complainant is made out and it is nothing but a vexatious complaint to otherwise settle the respondent's / complainant's scores by setting the criminal law into motion.

8. Considering the entire facts and circumstances of this case and the complaint filed by the respondent, subsequent to the case filed under Section 138 of Negotiable Instruments Act against him, this Court is of the view that it is a clear case of abuse of process of law on the part of the respondent. Therefore, it is a fit case to invoke the power vested in this Court under Section 482 of the Code of Criminal Procedure and quash the case as against the petitioner / A1 in C.C.No.215 of 2009 on the file of the learned Judicial Magistrate, Gudiyattam.

In view of the above, this Criminal Original Petition is allowed and the case against the petitioner / A1 in C.C.No.215 of 2009 on the file of the learned Judicial Magistrate, Gudiyattam, Vellore District is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

tsvn

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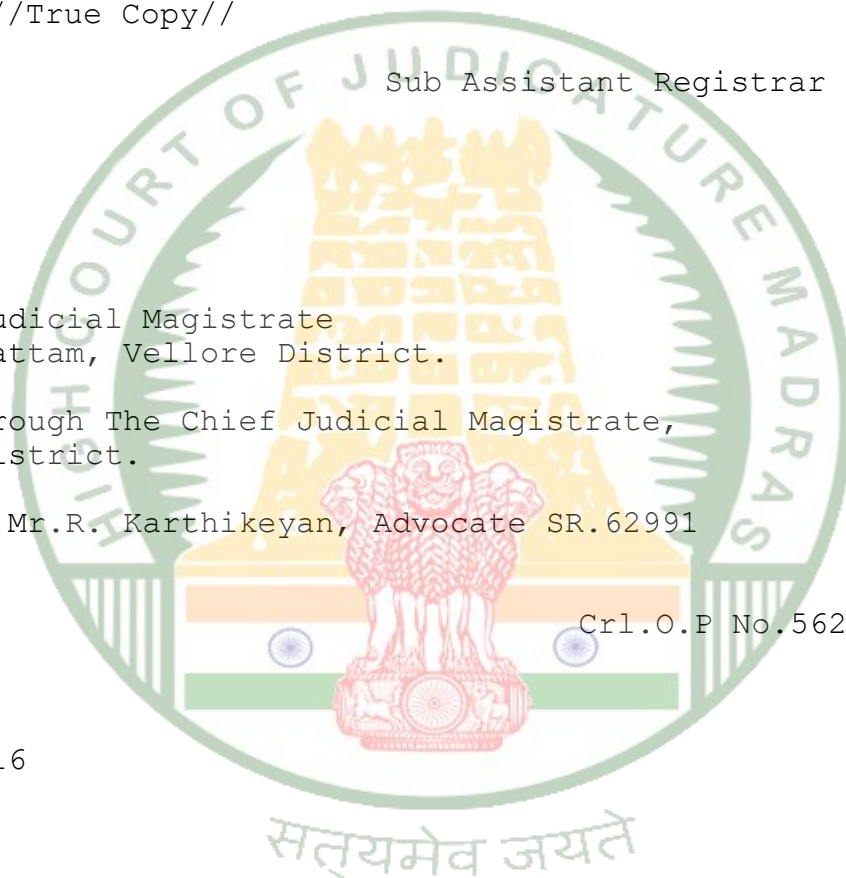
1. The Judicial Magistrate
Gudiyattam, Vellore District.

2.-do- through The Chief Judicial Magistrate,
Vellore District.

+ 1 cc to Mr.R. Karthikeyan, Advocate SR.62991

Cr1.O.P No.5628 of 2010

SKV(CO)
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