

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

CrI.O.P. No.15715 of 2016

K. Vijaya Shankari

Petitioner

vs.

Vasanth Kumar Sarma

Respondent

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to call for the entire records relating to the complaint in S.T.C. No.806 of 2016 on the file of the Judicial Magistrate, Thiruvottiyur, Chennai and quash the same.

For petitioner Mr. C. Jayaprakash

For respondent Mr. R. Prasadh

ORDER

This Criminal Original Petition has been filed seeking to call for the entire records relating to the complaint in S.T.C. No.806 of 2016 on the file of the Judicial Magistrate, Thiruvottiyur, Chennai and quash the same.

2 For the sake of convenience, the parties are referred to by their name.

3 Vasantha Kumar Sarma launched a prosecution in S.T.C. No.806 of 2016 under Section 138 of the Negotiable Instruments Act, before the Judicial Magistrate, Thiruvottiyur against Karunanidhi (A1) and Vijaya Shankari (A2). Concededly, Vijaya Shankari (A2) is the daughter of Karunanidhi (A1) and they were holding a joint S.B. A/c. No.851 541 463 in Indian Bank, Kolathur Branch.

4 It is the case of Vasantha Kumar Sarma that Karunanidhi (A1) and Vijaya Shankari (A2) borrowed from him, a sum of Rs.2 lakhs as hand loan and in discharge of the said liability, Karunanidhi (A1) had issued a cheque bearing No.709515 dated 11.01.2016 drawn on Indian Bank, Kolathur Branch for Rs.2 lakhs, which, when presented by him, was dishonoured. Hence, Vasantha Kumar Sarma issued a statutory notice dated 30.01.2016 and followed it up by filing the present complaint against

Karunanidhi (A1) and Vijaya Shankari (A2), challenging which, Vijaya Shankari (A2) is before this Court, seeking quashment of the prosecution against her.

5 Heard both sides.

6 The learned counsel for Vijaya Shankari (A2) submitted that Vijaya Shankari (A2) is 23 years old and she is the daughter of Karunanidhi (A1) and except the sin of having a joint S.B. account with her father, she was, in no way, connected with the alleged transaction with Vasantha Kumar Sarma. He also submitted that the cheque in question was issued by Karunanidhi (A1) and that Vijaya Shankari (A2) has not signed the same.

7 This Court perused the cheque in question and found that there is only one signature which is indecipherable.

8 Vijaya Shankari (A2) has filed an affidavit, wherein, at paragraph no.4, she has averred as under:

"4. I submit that the signature of impugned cheque is not mine and the signature is only my father namely Karunanidhi. I have not issued any cheque in discharge of any debt or other liability and the main ingredient of Section 138 of N.I. Act is absent and I am not the maker of the instrument and therefore, offence under Section 138 of N.I. Act is not made out and also in order to prevent me to undergo the ordeal of further attending trial and prevent abuse of process of Court. Hence, I may be discharged from the above offence under Section 138 of N.I. Act."

9 In view of the above, this Court is of the view that the prosecution of Vijaya Shankari (A2) is an abuse of process of law. Accordingly, the prosecution in S.T.C. No.806/2016 against Vijaya Shankari (A2) alone is hereby quashed and this Criminal Original Petition is allowed. It is now not open to Karunanidhi (A1) to take a defence that he has not signed the cheque in question.

10 It is represented that Karunanidhi (A1) is attending the Trial Court regularly. The Judicial Magistrate, Thiruvottiyur, is directed to release Karunanidhi (A1) on bail under Section 436, Cr.P.C. on the same day on his furnishing a bond for Rs.5,000/- with two sureties. The Trial Court is further directed to complete the trial within a period of six months from the date of receipt of a copy of this order. If Karunanidhi (A1) absconds, it is open to Trial Court to have an FIR registered against him under Section 229-A IPC.

With the above directions and observation, this Criminal Original Petition is allowed.

Sd/-  
Asst.Registrar

/true copy/

Sub Asst. Registrar

cad

To

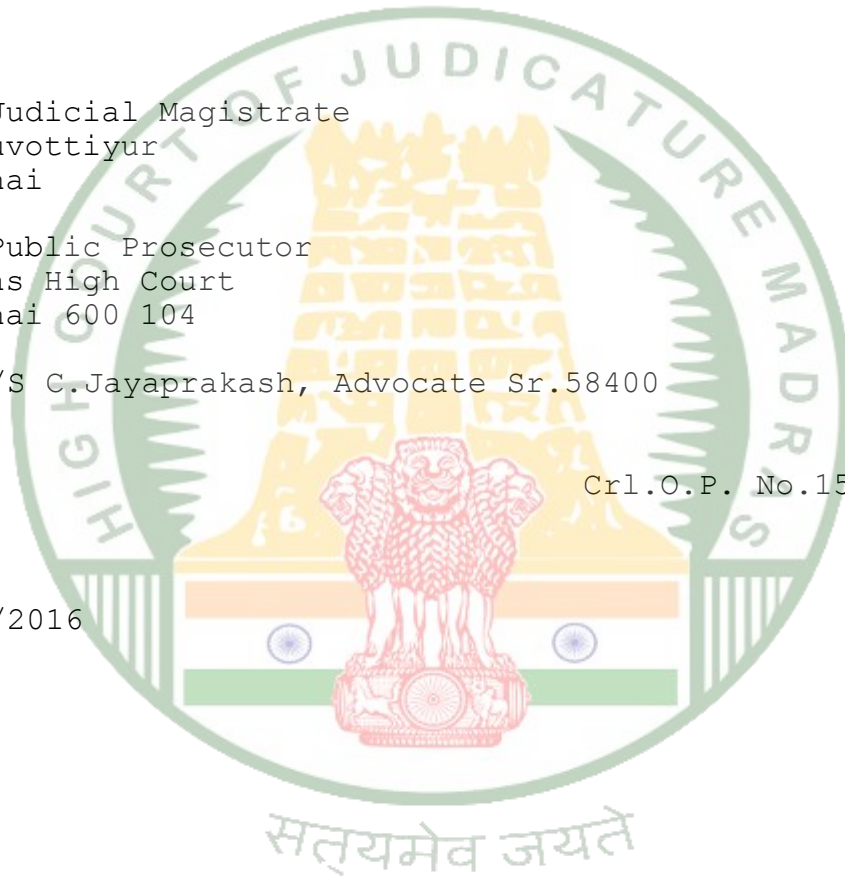
1 The Judicial Magistrate  
Thiruvottiyur  
Chennai

2 The Public Prosecutor  
Madras High Court  
Chennai 600 104

+1cc to M/S C.Jayaprakash, Advocate Sr.58400

Cr1.O.P. No.15715 of 2016

AD(CO)  
RVR 11/11/2016



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