

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.07.2016

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.OP.No.16400 of 2016
and CRL.MP.Nos.7967 & 7968 of 2016

Paul Rabinson Kennedy

.. Petitioner

Vs

Thamilarasan

.. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in connection with STC.No.157 of 2016 on the file of the Hon'ble District Munsif-cum-Judicial Magistrate, Neyveli, Cuddalore District and quash the same.

For Petitioner : Mr.M.Saravana Kumar

O R D E R

This petition has been filed to quash the proceedings in STC.No.157 of 2016 on the file of the District Munsif-cum-Judicial Magistrate Court, Neyveli, Cuddalore District.

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

3. For the sake of convenience, the parties will be referred to as complainant and accused. It is the case of the complainant that the accused had borrowed Rs.1,50,000/- on 14.12.2015 and when the complainant demanded the same, the accused issued a cheque dated 11.01.2016 for Rs.1,50,000/-, which when presented by the complainant on 11.01.2016, was returned unpaid for insufficient funds. Thereafter, the complainant issued a Statutory Notice dated 12.01.2016 by registered post with acknowledgment due, which was received by the accused on 19.01.2016 and reply was sent by the accused on 01.02.2016. But, the accused did not make payment towards the said cheque. Therefore, the complainant lodged a complaint in STC.No.157 of 2016 against the accused for an offence under Section 138 of Negotiable Instruments Act before the learned Judicial Magistrate, Neyveli. Challenging which, the accused is before this Court.

4. Mr.Saravana Kumar, learned counsel for the accused submitted that the Statutory Notice dated 12.01.2016 issued by the complainant does not satisfy the requirements of law, inasmuch as, it has not given 15 days time for the accused to return the amount. In support of his contention, he made

strong reliance of the judgment of the Hon'ble Supreme Court in M/s.Rahul Builders Vs. M/s.Arihant Fertilizers & Chemical and Another reported in 2008[2] SCC 321.

5. On a careful reading of Section 138 of Negotiable Instruments Act, it is seen that a duty is cast upon the complainant to sent a demand notice within 30 days of the receipt of the information by him from the Bank, regarding the return of the cheque. Under Section 138[c] of the Negotiable Instruments Act, if the accused fails to return the amount within 15 days from the date of receipt of the notice, then the cause of action for prosecuting him under Section 138 of Negotiable Instruments Act arises. From a reading of Section 138[b] and [c] of Negotiable Instruments Act as stated above, 138[b] cast a duty upon the complainant and 138[c] requires the accused to make the payment within 15 days from the receipt of the notice. Thus, Statute gives the accused 15 days time, which cannot be abridged or enlarged by the complainant. However, the complainant should file the complaint, after the expiry of the said 15 days period, but before the time stipulated by the Statute.

6. In fact, the judgment relied upon by the learned counsel does not support him, inasmuch as, in paragraph No.8, it is stated as follows:

"8. Section 138 does not speak of a 15 days' notice. It contemplates service of notice and payment of the amount of cheque within 15 days from the date of receipt thereof. When the statute prescribes for service of notice specifying a particular period, it should be expressly stated. In absence of any such stipulation, it is difficult to hold that 15 days' notice was thereby contemplated. The High Court, therefore, was not correct in arriving at the aforementioned finding."

7. On reading of the Statutory Notice dated 12.01.2016, the complainant has given the details of the cheque and the date of bouncing of the cheque and other details and put on notice to the accused that his cheque has bounced. Thereafter, the complainant has made demand of payment. Failure on the complainant to say that the amount must be paid within 15 days from the date of receipt of the notice cannot be held to be fatal, because this time period is given by the Statute and not by the grace of the complainant.

8. In the result, this petition is devoid of merits and stands dismissed, with liberty to the petitioner to raise all the points before the trial Court. Consequently, connected Miscellaneous Petitions are closed.

9. Learned counsel for the accused submitted that a direction may be issued to the trial Court to complete the trial expeditiously.

10. On the appearance of the accused, the trial Court is directed to release the accused on bail under Section 436 Cr.P.C. on the same day, on furnishing a bond for Rs.5,000/- with one surety to the satisfaction of the Magistrate. Thereafter, the trial Court is directed to complete the trial, within six months from the date of furnishing a bond, provided the accused co-operate with the trial by cross-examining the prosecution witnesses on the day, they are examined in-chief.

Sd/-
Asst.Registrar

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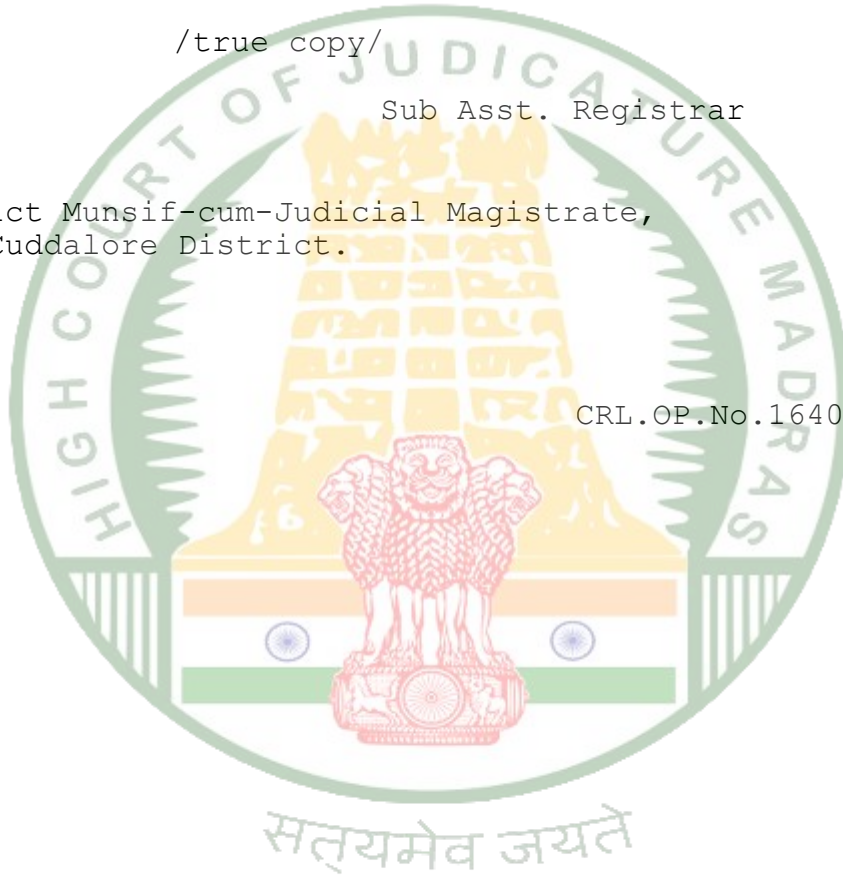
Sub Asst. Registrar

To

The District Munsif-cum-Judicial Magistrate,
Neyveli, Cuddalore District.

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krd 18/8

CRL.OP.No.16400 of 2016



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