

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.09.2016

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

Crl.R.C.No.727 of 2016
and Crl.MP.No.5435 of 2016

R.Mathiyalagan

.. Petitioner

Vs.

Jayamani

.. Respondent

Prayer :- Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C. to set aside the order dated 05.04.2016 made in Crl.MP.No.5521 of 2015 in MC.No.53 of 2015 passed by the learned Judicial Magistrate No.I, Mettur.

For Petitioner : Mr.A.Sundravadhanan.
For Respondent : Mr.V.Sekar.

ORDER

The Criminal revision is directed against the order passed by the learned Judicial Magistrate No.I, Mettur made in Crl.MP.No.5521 of 2015 in MC.No.53 of 2015 dated 05.04.2016, dismissing discharge application filed by the revision petitioner.

2.The learned counsel for the petitioner would mainly contend that the trial Court failed to appreciate the fact that Payment and Settlement Systems Act, 2007 and the consequential notification issued by the Reserve Bank of India. The cheque filed by the respondent is non-CTS cheque, the cheque presented by the respondent cannot be accepted for payment, in view of the bar imposed by the Reserve Bank of India which had issued specific direction that the customer is directed to return the non-CTS cheque and replace with the CTS cheque. The cheque was issued to the petitioner in the year 2002 and the same was presented and returned in the year 2015 and all other cheques prior and after this cheque in issue was en-cashed in the year 2002 itself. Since, the cheque is non-CTS cheque, the present application filed by the petitioner is liable to be allowed, the trial Court erroneously dismissed the application, the learned counsel prays to set aside the order of the trial Court and to allow the criminal revision.

3.The learned counsel for the respondent would mainly contend, even though it is not CTS cheque, it is presented for payment and the cheque was returned as dishonoured. It is a cheque as per Section 138 of the Negotiable Instruments Act. The trial Court after appreciating the entire facts and circumstances of the case, dismissed the application and there is no illegality or infirmity in the order of the trial Court and the learned counsel prays for dismissal of the revision petition.

4.On reading of the order passed by the trial Court, it is clearly seen that the petition for discharge was filed only after commencement of trial, the complainant before the trial Court was examined and marked Exs.A1 to A5. In this petition Branch Manager, Lakshmi Villas Bank Mr.Loganathan was examined as PW1 and Exs.1 to 3 documents were marked. It is revealed that the present cheque in question was presented for collection before the Lakshmi Vilas Bank, Mettur Brach and the cheque was returned with an endorsement "Exceeds Arrangements". The complainant issued notice demanding the amount, after issuance of notice no amount was paid. Hence, the complaint was lodged under Section 138 of the Negotiable Instruments Act. In this case, cheque in question was issued to the complainant and it was presented for payment and the cheque was dishonoured as it exceeds arrangements and cheque was not returned by the banker stating that the cheque was not CTS cheque, further the cheque was not returned on the above said ground or not, but returned as per RBI guidelines. There is no restriction by the RBI restricting the use of old cheque/non CTS issued to the customer.

5.In view of the above circumstances, the cheque in question was returned only on the ground exceeds arrangements and cheque was not returned by the Banker on the ground, it is not CTS cheque and it should not be used by the customer.

6.This Court is of the considered view, dishonour of cheque by the banker stating as it exceeds arrangements for the said offence comes within the purview of Negotiable Instruments Act. The trial Court has to decide whether the respondent has committed the offence under Section 138 of the Negotiable Instruments Act.

7.Hence, the arguments of the learned counsel for the petitioner is liable to discharge is untenable and the arguments of the learned counsel for the petitioner is liable to be rejected. This Court finds there is no illegality or infirmity in the order passed by the learned Judicial Magistrate No.I, Mettur and the same does not warrant any interference by this Court.

8.In the result, the criminal revision stands dismissed. Consequently, connected miscellaneous petition is closed. The trial Court is directed to dispose of the main case preferably within a period of eight weeks from the date of receipt of a copy of this order.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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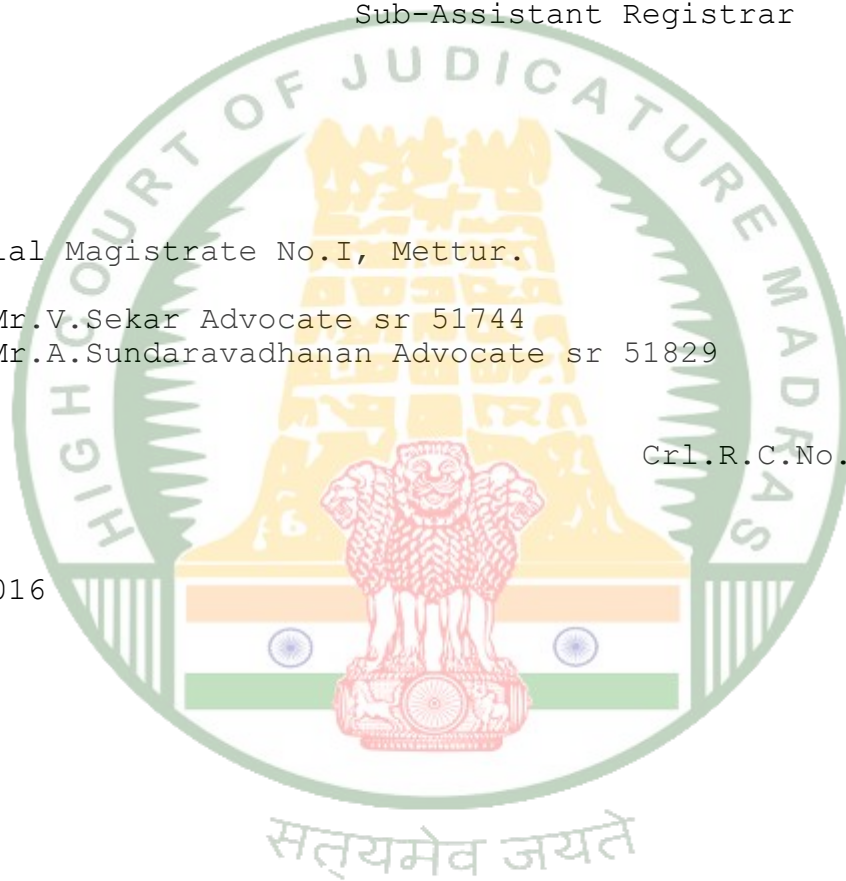
The Judicial Magistrate No.I, Mettur.

+1 cc to Mr.V.Sekar Advocate sr 51744

+1 cc to Mr.A.Sundaravadhanan Advocate sr 51829

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