

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 30.06.2016

DELIVERED ON: 05.07.2016

CORAM:

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

Crl.O.P. No.27882 of 2015 and M.P. No.1 of 2015  
and  
Crl.O.P. No.1372 of 2016

K. Rajagopalan Petitioner in Crl.O.P. No.27882 of 2015

vs.

1 Sri Srinivasa Engineering Works  
represented by its Managing Partner  
A. Perumal  
T.S. No.3, SIDCO Industrial Estate  
Mettur Dam

2 A. Perumal

3 P. Vasantha Respondents in Crl.O.P. No.27882 of  
2015

1 Sri Srinivasa Engineering Works  
represented by its Managing Partner  
A. Perumal  
T.S. No.3, SIDCO Industrial Estate  
Mettur Dam

2 A. Perumal

3 P. Vasantha Petitioners in Crl.O.P. No.1372 of 2016  
vs.

K. Rajagopalan Respondent in Crl.O.P. No.1372 of 2016

Prayer in Crl.O.P. No.27882 of 2015:

Criminal Original Petition filed under Section 482, Cr.P.C.,  
seeking to set aside the order dated 14.09.2015 passed in Memo in  
S.T.C. No.2668 of 2014 on the file of the Judicial Magistrate No.II,  
Mettur.

Prayer in Crl.O.P. No.1372 of 2016:

Criminal Original Petition filed under Section 482, Cr.P.C.,  
seeking to call for the records pertaining to S.T.C. No.2668 of 2014  
on the file of the Judicial Magistrate No.II, Mettur and quash the

said complaint in S.T.C. No.2668 of 2014 filed by the respondent.

For petitioner in  
Crl.O.P. 27882 of 2015 & Mrs. Chitra Sampath, Sr. Counsel  
respondent in for Mr. R. Nalliyappan  
Crl.O.P.No.1372 of 2016

For respondents in  
Crl.O.P. No.27882 of 2015 Mr. B. Kumar, Sr. Counsel  
& petitioners in for Dr. P. Jagadeesan  
Crl.O.P. No.1372 of 2016

#### ORDER

While Crl.O.P. No.27882 of 2015 is filed to set aside the order dated 14.09.2015 passed in Memo in S.T.C. No.2668 of 2014 on the file of the Judicial Magistrate No.II, Mettur, Crl.O.P. No.1372 of 2016 is filed to call for the records pertaining to S.T.C. No.2668 of 2014 on the file of the Judicial Magistrate No.II, Mettur and quash the said complaint in S.T.C. No.2668 of 2014 filed by the respondent.

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

3 Rajagopalan [the complainant in the case filed under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the Act") and the petitioner in Crl.O.P. No.27882 of 2015] launched a prosecution in S.T.C. No.2668 of 2014 before the Judicial Magistrate Court No.II, Mettur, for an offence under Section 138 of the Act against Sri Srinivasa Engineering Works and its Partners (Accused in S.T.C. No.2668 of 2014 and petitioners in Crl.O.P. No.1372 of 2016).

4 It is the contention of Rajagopalan that he is a good friend of A.Perumal (A2 / Managing Partner of Sri Srinivasa Engineering Works) and together, they entered into partnership in certain ventures.

5 The long and short of K. Rajagopalan's story is that some disputes arose between him and A. Perumal and in settlement of the said disputes, a cheque dated 04.07.2014 for Rs.2,40,31,445/- (for brevity "the impugned cheque") was issued by Sri Srinivasa Engineering Works, which was presented by him for encashment in his bank, viz., Vijaya Bank, Ganga Nagar Branch, Bangalore. The impugned cheque was dishonoured on the ground "Account closed", pursuant to which, Rajagopalan issued a statutory notice dated 28.07.2014 and followed it up with the complaint in S.T.C. No.2668 of 2014 before the Judicial Magistrate Court No.II, Mettur, against Sri Srinivasa Engineering Works and its Partners, as aforesaid.

6 While so, it is the contention of A. Perumal that K. Rajagopalan had taken advantage of his proximity with him and had misused the impugned cheque leaf in breach of trust and had filled up the amount of Rs.2,40,31,445/- for the purpose of initiating a

prosecution under Section 138 of the Act.

7 On the complaint given by Sri Srinivasa Engineering Works, the District Crime Branch, Salem, registered a case in Crime No.29 of 2014 against Rajagopalan and after a thorough investigation, a final report in C.C. No.11 of 2015 was filed before the Judicial Magistrate Court No.II, Mettur, Salem for offences under Sections 405, 406, 408, 418 and 424 IPC against Rajagopalan.

8 Thus, there are two cases pending on the file of the Judicial Magistrate Court No.II, Mettur, Salem, viz., (1) S.T.C. No.2668 of 2014 filed by Rajagopalan against Sri Srinivasa Engineering Works for offence under Section 138 of the Act and (2) C.C. No.11 of 2015 filed by the District Crime Branch, Salem, against Rajagopalan for offences under Sections 405, 406, 408, 418 and 424 IPC on the complaint lodged by Sri Srinivasa Engineering Works.

9 It may be necessary to state here that Rajagopalan had filed S.T.C. No.2668 of 2014 before the Judicial Magistrate Court No.II, Mettur, Salem, prior to the judgment passed by the Supreme Court in Dashrath Rupsingh Rathod vs. State of Maharashtra and Others [JT 2014 (9) SC 1981]. In other words, though Rajagopalan had presented the impugned cheque in his bank account with Vijaya Bank, Ganga Nagar Branch, Bangalore, yet, he chose to file S.T.C. No.2668 of 2014 before the Judicial Magistrate Court No.II, Mettur, within whose jurisdiction the bank of Sri Srinivasa Engineering Works is situate.

10 While so, the Act has been amended and Section 142(2) of the Act, as amended, reads as follows:

"142. Cognizance of offences:

2 The offence under Section 138 shall be inquired into and tried only by a Court within whose local jurisdiction,--

a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

b) if the cheque is presented for payment by the payee or holder in due course otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation: For the purposes of clause (a), where a cheque is delivered for collector at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account."

11 In view of the above amendment, Rajagopalan filed a Memo before the Judicial Magistrate Court No.II, Mettur, contending that the complaint in S.T.C. No.2668 of 2014 should be returned so as to be presented before the jurisdictional Court in Bangalore in the light of Section 142(2) of the Act, as amended.

12 The said Memo was dismissed by the Judicial Magistrate Court No.II, Mettur on 14.09.2015 on the ground that C.C. No.11 of 2015 filed by the District Crime Branch, Salem, against Rajagopalan in respect of the impugned cheque is pending before the said Court and therefore, it will be in the interest of justice to have both the cases heard by the same Court. Challenging the order dated 14.09.2015 passed by the Judicial Magistrate Court No.II, Mettur, refusing to transfer the case from its file to Bangalore, Rajagopalan has filed CrI.O.P. No.27882 of 2015.

13 Challenging the very prosecution initiated by Rajagopalan in S.T.C.No.2668 of 2014, Sri Srinivasa Engineering Works has filed CrI.O.P. No.1372 of 2016 on the ground that it is clearly an abuse of process of law, inasmuch as the impugned cheque relates to the period of 2002 and after coming into force of the Circular of the Reserve Bank of India dated 10.08.2012 issued under Section 18 of the Payment and Settlement Systems Act, 2007, the very cheque leaf is void and therefore, the prosecution built on a void instrument deserves to be quashed.

14 Heard Mr. B. Kumar, learned Senior Counsel appearing for Sri Srinivasa Engineering Works and Mrs. Chitra Sampath, learned Senior Counsel appearing for Rajagopalan.

15 Mrs. Chitra Sampath, learned Senior Counsel, contended that if this Court allows the plea of Rajagopalan that the case in S.T.C. No.2668 of 2014 should be transferred to the jurisdictional Court in Bangalore in the light of the amendment to Section 142(2) of the Act, the Madras High Court loses its jurisdiction to hear the quash application filed by Sri Srinivasa Engineering Works.

16 Per contra, Mr. B. Kumar, learned Senior Counsel submitted that C.C.No.11 of 2015 and S.T.C. No.2668 of 2014 should be heard and tried by the same Court, as they are case and counter and he strongly relied upon the judgment of the Supreme Court in B.R. Gupta and another vs. Rohit Jain [(2007) 7 SCC 454], wherein, on similar facts, the Supreme Court transferred the IPC case from the file of the Chief Judicial Magistrate Court, Bhatinada, Punjab, to the Metropolitan Magistrate Court, New Delhi, where, the prosecution under Section 138 of the Act is pending.

17 Mr. B. Kumar, placing reliance upon the judgment of the Supreme Court in Kewal Krishan vs. Suraj Bhan and another [1980 (Supp.) SCC 499], submitted that in the light of the law laid down in the said judgment that case and counter should be tried by the same Court, this Court is required to follow the mandates of the Supreme

Court and permit both the cases to be heard by the Judicial Magistrate Court No.II, Mettur, Salem.

18 This Court gave its anxious consideration to the submissions of either side.

19 It is true that the District Crime Branch, Salem, has conducted a thorough investigation and filed a final report against Rajagopalan that he has misused the impugned cheque leaf, which is the subject matter of the prosecution in S.T.C. No.2668 of 2014 for the offence under Section 138 of the Act.

20 It is trite that the police investigation and consequent prosecution can be launched by the police for cognizable offences under the Indian Penal Code, if the document in question has been fabricated prior to its introduction as a document in a Court [See Constitution Bench judgment of the Supreme Court in Iqbal Singh Marwah vs. Meenakshi Marwah, (AIR 2005 SC 2119)].

21 Though this Court finds that the prosecution against Rajagopalan in C.C. No.11 of 2015 before the Judicial Magistrate Court No.II, Mettur, Salem, is not a frivolous one, yet, that cannot be a reason to confer jurisdiction on the Judicial Magistrate Court No.II, Mettur to try the case de hors Section 142(2) of the Act, as amended.

22 On account of Section 142(2) of the Act, as amended, the Judicial Magistrate Court No.II, Mettur, has no jurisdiction to try the case in S.T.C. No.2668 of 2014. A Constitution Bench of the Supreme Court in C.B.I. & others vs. Keshub Mahindra etc., [AIR 2011 SC 2037], has held as under:

"4. . . . . No decision by any court, this Court not excluded, can be read in a manner as to nullify the express provisions of an Act or the Code . . . . ."

23 In the light of the above, this Court cannot read the judgment of the Supreme Court in Kewal Krishan case to the effect that it nullifies the provisions of Section 142(2) of the Act, as amended.

24 The Trial Court has to implicitly obey the mandates of Section 142(2) of the Act and cannot hold on to the case, however desirable it may be. This Court has to give full effect to the provisions of law, especially, when there is no ambiguity and a legal provision cannot be stretched unduly in order to accommodate surreal cases that are far and few, however noble, the objective may be.

25 It is always open to Sri Srinivasa Engineering Works to approach the Supreme Court for transfer of the case under Section 138 of the Act from Karnataka to Salem, Tamil Nadu, since transfer jurisdiction of superior Courts is entirely different from original jurisdiction of Trial Courts.

26 In the result, the order dated 14.09.2015 passed by the Judicial Magistrate Court No.II, Mettur in the Memo in S.T.C. No.2668 of 2014 is set aside and Crl.O.P. No.27882 of 2015 preferred by Rajagopalan is allowed with the following directions and the connected Crl.M.P. is closed:

i Rajagopalan shall deposit a sum of Rs.1,000/- within a period of one week from the date of receipt of a copy of this order with the Judicial Magistrate Court No.II, Mettur, towards expenses like photocopying, postage charges, etc. to be incurred in the process of transfer;

ii The Judicial Magistrate No.II, Mettur, shall take photocopies of the entire records in S.T.C. No.2668 of 2014, attest the same and keep them in his file;

iii The Judicial Magistrate No.II, Mettur, shall transfer the original records in S.T.C. No.2668 of 2014 by "Registered Post with Acknowledgment Due" to the address of the Chief Metropolitan Magistrate, Bangalore, who, in turn, is requested to transmit the case to the Court within whose territorial jurisdiction, Vijaya Bank, Ganga Nagar Branch, Bangalore, is situate.

27 In view of the above, Crl.O.P. No.1372 of 2016 preferred by Sri Srinivasa Engineering Works and its Partners is hereby dismissed with liberty to challenge the prosecution before the High Court of Karnataka. It is also open to the parties to approach the Supreme Court seeking transfer of the prosecution under Section 138 of the Act from Karnataka to the file of Judicial Magistrate Court No.II, Mettur, Salem, Tamil Nadu.

Taking advantage of the transfer ordered by this Court, it is possible for Rajagopalan to prolong the prosecution under Section 138 of the Act in order to stall the proceedings in C.C. No.11 of 2015 pending against him before the Judicial Magistrate Court No.II, Mettur. Therefore, this Court directs the Judicial Magistrate Court No.II, Mettur, to wait for a reasonable period to see if the parties get appropriate relief from the Supreme Court and thereafter, proceed with the trial in C.C. No.11 of 2015 and not to keep it pending indefinitely.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

cad

To

1 The Judicial Magistrate No.II  
Mettur

2 The Chief Metropolitan Magistrate  
Bangalore

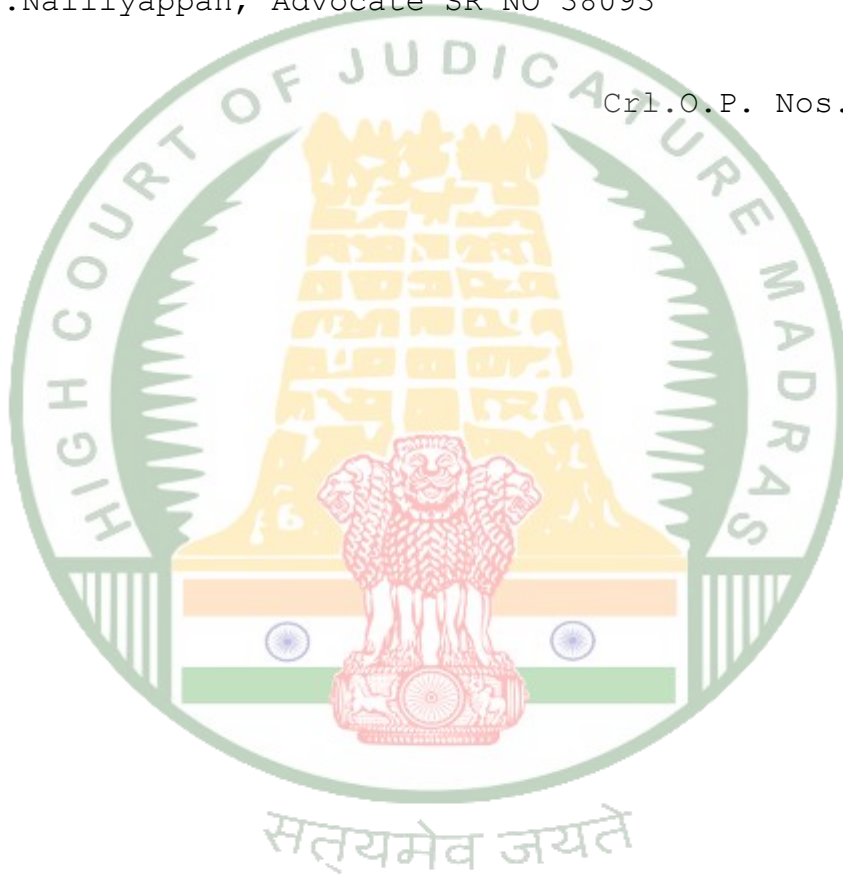
3 The Public Prosecutor  
High Court, Madras

+ 6 CCS to M/s.P.Jagadeesan, Advocate SR NO 36835

+ 1 CC to Mr.Nalliyappan, Advocate SR NO 38093

Crl.O.P. Nos.27882 of 2015  
and  
1372 of 2016

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