

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2016

CORAM:

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

Crl.O.P. No.21245 of 2016

and Crl.M.P.No.9823 of 2016

Eswar Rao

..Petitioner/3rd Accused

vs.

M/s INDUSINDBANK LTD
rep by its Authorized representative
Mr.Murali
Having office at
6th Floor, Building No.9
Salitare Corporation Park
167, Guru Harigovinji Marg
Andheri (E)
Mumbai 400 093.

..Respondent

Criminal Original Petition filed under Section 482, Cr.P.C.
to call for the records relating to C.C.No.2520/2016 on the file
of Fast Track Judge at Saidapet, Chennai and quash the same.

For petitioner
For Respondent

Mr.S.Sugendran
Mr.T.Dhanyakumar

ORDER

This Criminal Original Petition has been filed to call for
the records relating to C.C.No.2520/2016 on the file of Fast
Track Judge at Saidapet, Chennai and quash the same.

2.Heard the learned counsel for the petitioner and the
learned counsel appearing for the respondent.

3. It is the case of IndusInd Bank Ltd.
(complainant/respondent herein) that Excel Engineers represented
by its Proprietor Prabhakar Rao, had borrowed loan and had
defaulted in repaying it. In discharge of the liability, Excel
Engineers issued a cheque dated 25.01.2016 for Rs.3,84,267/-,
which when presented by IndusInd Bank Ltd. was dishonoured,
pursuant to which, IndusInd Bank Ltd. issued a statutory notice
and followed it up by filing the present complaint in
C.C.No.2520 of 2016 u/s 138 of the Negotiable Instruments Act,

which is now pending on the file of the Fast Track Court (Magisterial level), Saidapet. The complaint in C.C.No.2520 of 2016 has been filed against Excel Engineers (A1), Prabhakar Rao (A2), Eswar Rao (A3) and Chaya Prabhakar (A4), challenging which, Eswar Rao (A3) is before this Court.

4. Learned counsel for the petitioner submitted that even according to the complainant, Excel Engineers is a proprietary concern owned by Prabhakar Rao and the cheque has been issued on the account held by Excel Engineers in the Bank of Baroda. The signatory to the cheque is Prabhakar Rao. Therefore, the prosecution of Eswar Rao, who is the father of Prabhakar Rao and Chaya Prabhakar, wife of Prabhakar Rao is an abuse of process of law.

5. Per contra, learned counsel appearing for IndusInd Bank Ltd., refuted the contention and submitted that the prosecution is maintainable in all its fours.

6. This Court gave its anxious consideration to the rival submissions.

7. On a reading of the complaint, it is evident that the impugned cheque has been issued by Excel Engineers represented by its Proprietor Prabhakar Rao and the same has been signed by Prabhakar Rao and not by Eswar Rao or Chaya Prabhakar. Therefore, neither Eswar Rao nor Chaya Prabhakar can be made criminally liable with the aid of Section 141 of the Negotiable Instruments Act. Though Chaya Prabhakar is not before this Court, this Court is of the view that it will be in the interest of justice, if the prosecution as against her is also quashed. In any event, the learned Magistrate, before issuing process to Eswar Rao and Chaya Prabhakar should have perused the complaint averments. Had the complaint been perused, the learned XVII Metropolitan Magistrate, Saidapet, who had taken cognizance of the offence would not have issued process to Eswar Rao and Chaya Prabhakar mechanically. Now the case is pending with the Fast Track Court, Saidapet.

In the result, this petition is allowed and the prosecution in C.C.No.2520 of 2016 on the file of the Fast Track Court (Magisterial level), Saidapet is quashed as against Eswar Rao and Chaya Prabhakar. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1 Fast Track Judge at Saidapet,
Chennai.

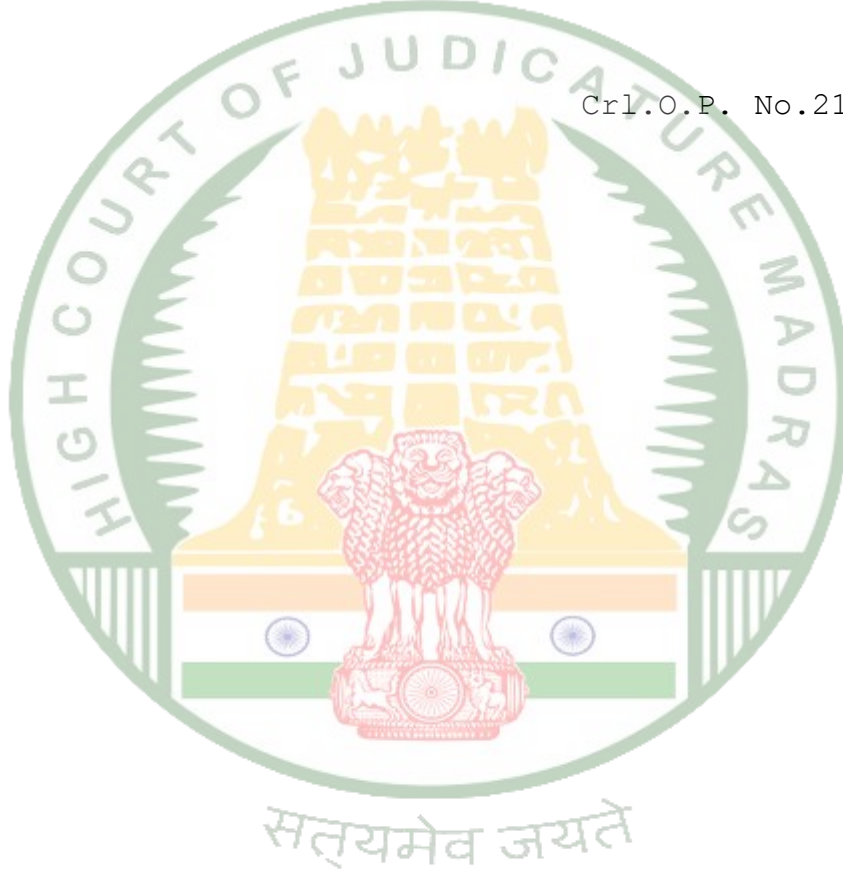
2 The Public Prosecutor
Madras High Court
Chennai 600 104

+1 cc to Mr.S.Sagendran,advocate,sr.62453

+1 cc to Mr.T.Dhanyakumar,advocate,sr.61945.

scd(co)
krd 23/11

CrI.O.P. No.21245 of 2016



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