

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.09.2016

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.OP.No.21867 of 2016

and

CRL.M.P.Nos.10146 & 10147 of 2016

Ramachandran ... Petitioner

Vs.

Kesavan ... Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records of the case in C.C.No.21 of 2015 on the file of the learned Additional District Munsif cum Judicial Magistrate No.1, Ulundurpettai and quash the same.

For Petitioner : Mr.V.Karthikeyan

O R D E R

This criminal original petition has been filed to call for the records of the case in C.C.No.21 of 2015 on the file of the learned Additional District Munsif cum Judicial Magistrate No.1, Ulundurpettai and quash the same.

2. Heard the learned counsel appearing for the petitioner.

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

4. Kesavan has lodged a complaint against Ramachandran in C.C.No.21 of 2015, which is now pending on the file of the District Munsif cum Judicial Magistrate No.1, Ulundurpet, for an offence under Section 138 of the Negotiable Instruments Act, challenging which, Ramachandran is before this Court.

5. The learned counsel for Ramachandran submitted that in this case, the impugned Cheque bearing No.172343 dated 24.10.2014, was given by Ramachandran to Kesavan only as security, because Kesavan was doing Chit business, in which, Ramachandran had joined, but the amount was completely paid to Kesavan, in spite of it, Kesavan is threatening Ramachandran with the cheque in hand. In this regard, Ramachandran has lodged a police complaint, based on which, petition enquiry was completed in CSR No.108 of 2014. Hence, the prosecution under Section 138 of the Negotiable Instrument Act is abuse of process of law.

6. This Court gave its anxious consideration to the submission of the learned counsel for Ramachandran.

7. In S.Krishnamoorthy Vs. Chellammal (2015 (4) Scale 371), the Hon'ble Supreme Court has held that this Court cannot go into the disputed questions of fact in a proceeding under Section 482 Cr.P.C. In this case, the allegations, such as, the cheque was given as only security and that, Kesavan had threatened Ramachandran etc., are disputed questions of fact, which cannot be decided in a petition under Section 482 Cr.P.C.

8. Mr.V.Karthikeyan, learned counsel for Ramachandran, prayed for dispensing with the personal appearance of the Ramachandran in the Trial Court.

9. Accepting the submission of the learned counsel for the petitioner, the petitioner is directed to surrender before the trial Court and on his surrender, he shall be released on bail under Section 436 Cr.P.C. on his executing a bond for Rs.5,000/- [Rupees five thousand only] with two sureties to the satisfaction of the Learned Additional District Munsif cum Judicial Magistrate No.1, Ulundurpet, so that he will be entitled to the benefits u/s 389(3) Cr.P.C. Thereafter, the presence of the petitioner before the trial Court is dispensed with, on condition that he shall file an affidavit before the trial Court that he will not dispute his identity and that his counsel will cross-examine the witnesses when he examined in-chief, as held by the Hon'ble Supreme Court in Vinodh Kumar Vs State of Punjab reported in 2015[1] MCJ [Cr1] 288. The petitioner shall be present before the trial Court for receiving the complaint for answering charge, for questioning under Section 313 Cr.P.C. and on the date of judgment. On other hearings, if he files an application for dispense with, the same shall be permitted by the trial Court. If the petitioner fails to appear before the Court without sufficient cause, after having been released on bail in accordance with the terms of the bail order, a fresh prosecution can be initiated against him under Section 229-A IPC.

In view of the above, the criminal original petition is dismissed with liberty to the petitioner to raise all the points before the trial Court. Consequently, connected miscellaneous petitions are closed.

-sd/-

Assistant Registrar

/ TRUE COPY /

Sub-Assistant Registrar

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To

1. The Additional District Munsif cum
Judicial Magistrate No.1, Ulundurpettai.

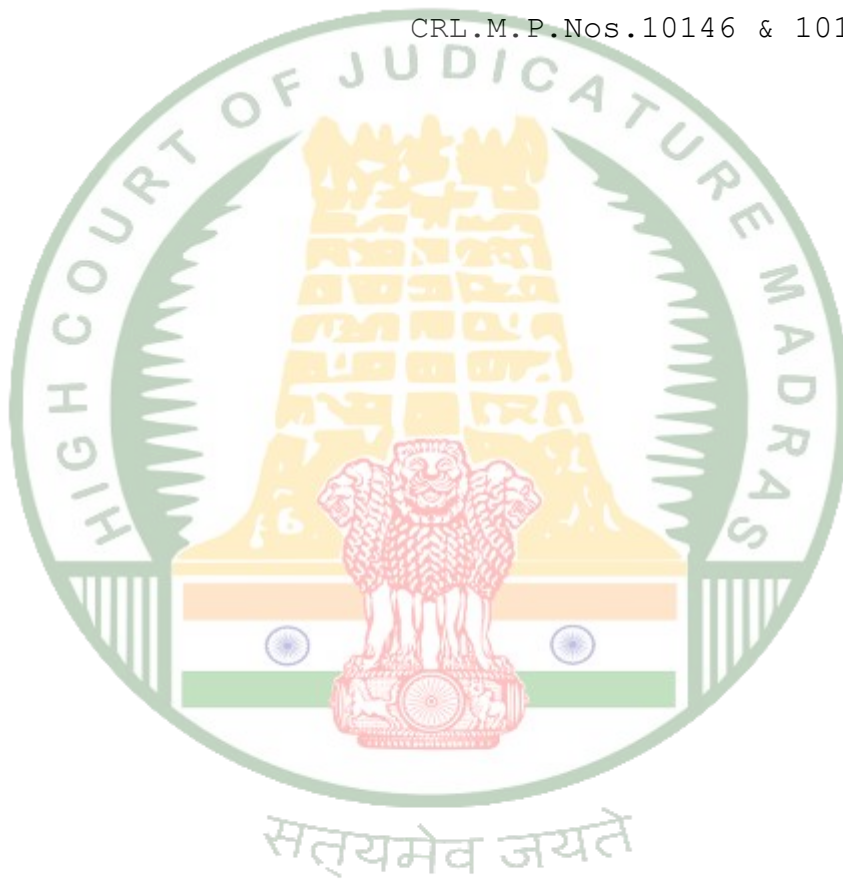
2 THE CHIEF JUDICIAL MAGISTRATE
VILLUPURM DISTRICT

3.The Public Prosecutor,
High Court, Madras.

+1 CC TO MR.S.V.KARTHIKEYAN Advocate SR.NO. 56334

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RD 04/11/2016



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