

THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.10..2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Criminal Original Petition No.23040 of 2016

and CrI.M.P.No.10816 of 2016

Prabha Ramani ... Petitioner/Accused

-Versus-

M.Baskar ... Respondent/Complainant

Petition filed under Section 482 of Cr.P.C. challenging the order dated 27.09.2016 made in CrI.M.P.No.4888 of 2016 in C.C.No.168 of 2016 by the learned Judicial Magistrate, Fast Track Court No.I, Erode.

For Petitioner : Mr.J.Titus Enock

ORDER

For the sake of convenience, the parties in this order will be referred to as accused and complainant respectively.

2. The complainant has lodged a prosecution in C.C.No.168 of 2016 before the learned Judicial Magistrate No.I, Erode for offence under Section 138 of The Negotiable Instruments Act against the accused. The complainant was examined in chief and on a petition filed by the accused under Section 311 of Cr.P.C. the complainant was recalled and cross examined by the accused. Thereafter, the accused was questioned under Section 313 of Cr.P.C. After examination of the accused under Section 313 of Cr.P.C. was over, the accused filed a petition under Section 254 (2) of Cr.P.C. praying for issuance of summons to one Rajkumar and the Manager of the complainant's bank for being examined as defence witness. The trial court has considered the petition of the accused and by order dated 27.09.2016, permitted the accused to examine Rajkumar, but, however, negatived the plea for examination of the Manager of the complainant's bank. Aggrieved by that portion of the order, the accused is now before this court with the present original petition.

3. The learned counsel for the accused submitted that the cheque in question does not bear any sign for having been presented at the bank for collection and therefore, the examination of the Manager of the complainant's bank is essential.

4. This court gave its anxious consideration to the submission made by the learned counsel for the accused. In a case under Section 138 of the Negotiable Instruments Act, it is for the complainant to prove the minimum ingredients for fastening criminal liability on the accused. The accused has given two reasons for summoning the Manager of the complainant's bank namely (1) to prove the sources of income; and (2) to elicit the fact that how many times the cheque in question was sent for collection.

5. As rightly pointed out by the trial court in the impugned order, the complainant has not stated in his cross examination that he had withdrawn money from his bank to advance loan to the accused. That apart, the complainant has clearly stated that the cheque in question was presented for clearance on 10.05.2016 and it was returned unpaid on 21.05.2016. The proof of number of times in which the cheque in question was presented is a fact which would have been put to the complainant in the cross examination and not by examining the Branch Manager of the complainant's bank. Under such circumstances, this court does not find any infirmity at all in the order passed by the trial court.

6. In the result, the criminal original petition is devoid of merits and the same is accordingly dismissed. Consequently, connected MP is closed.

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

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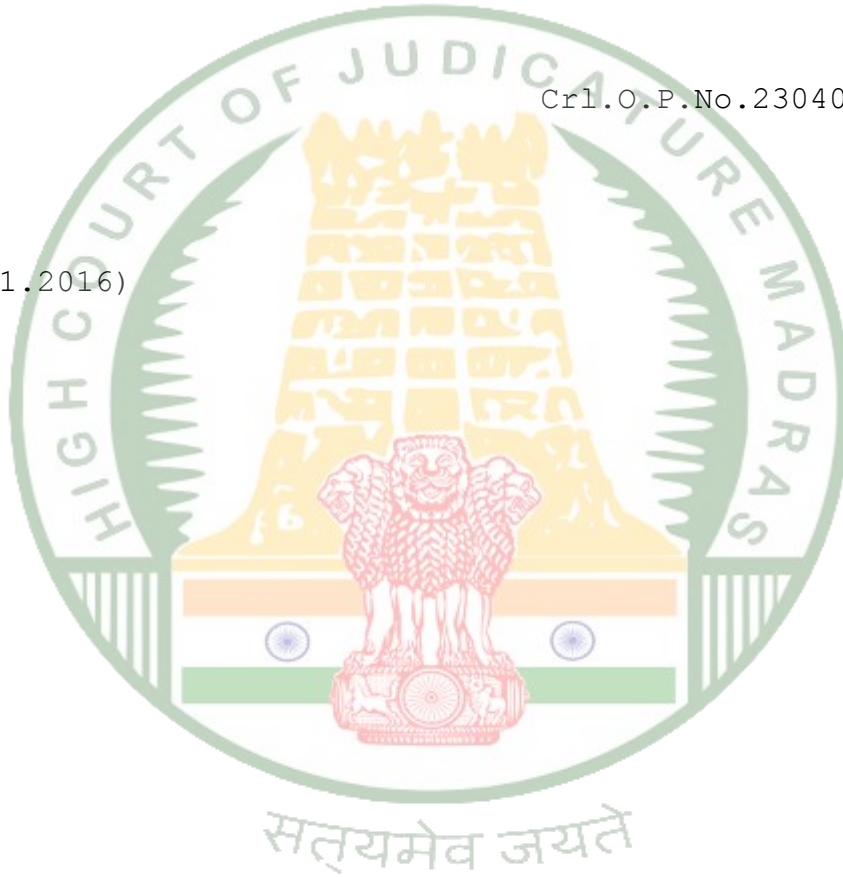
To

1.The Judicial Magistrate,
Fast Track Court No.I, Erode.

+1 CC to *Mr.J.Titus Enock*, Advocate Sr.No.58436

Cr1.O.P.No.23040 of 2016

SVI (CO)
KP (12.11.2016)



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