

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23. 11.2016

C O R A M

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.25309 of 2016 and
Crl.MP Nos.12274 and 12275 of 2016

A.Srinivas

...Petitioner/Accused

Vs.

M.Babu

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C to call for the records in C.C.No.47 of 2016 on the file of the Judicial Magistrate, Arakonam, Vellore District and quash the same.

For Petitioner : Mr.D.Rajasekar

O R D E R

This Criminal Original Petition has been filed seeking to call for the records in C.C.No.47 of 2016 on the file of the Judicial Magistrate Court, Arakonam, Vellore District and quash the same.

2. Heard the learned counsel for the petitioner.

3. For the sake of convenience, the petitioner and respondent are referred to as accused and complainant respectively.

4. It is the case of the complainant that the accused borrowed a sum of Rs.6,00,000/- [Rupees six lakhs only] on 22.04.2013 and in discharge of the said liability, he had issued a post dated cheque dated 12.05.2013 for Rs.6,00,000/-, which, when presented by the complainant, was dishonoured on the ground "payment stopped by the Drawer".

5. The complainant issued a statutory notice dated 22.08.2013, which was not received by the accused. Since the accused did not make the payment, the complainant filed a case in C.C.No.47 of 2016, which is now pending on the file of the Judicial Magistrate Court, Arakonam, under Section 138 of the Negotiable Instruments Act, 1881, challenging which, the accused is before this Court.

6. The learned counsel for the petitioner/accused submitted that the petitioner/accused is a total stranger. It is the case of the accused that he is doing business dealing with one L.G.Ravi and he had given a cheque to said Ravi, who, in turn handed over the cheque to the complainant. The learned counsel for the petitioner/accused also submitted that the complaint was filed on 03.10.2013 and the same is barred by limitation. In S.Krishnamurthy Vs Chellammal [2015] 4 Scale 371, the Supreme Court very clearly held that prosecution under Section 138 of Negotiable Instruments Act cannot be quashed when disputed of the questions of fact are involved.

7. Whether the cheque was issued to Ravi is a disputed question of fact, which cannot be decided by this Court in this quash application. As regards the limitation aspect, that is also a question of fact and it is open to the complainant to file an application for condonation of delay in terms of proviso to Section 142 of the Negotiable Instruments Act and therefore, on that ground also, the complaint cannot be quashed.

8. The learned counsel for the accused submitted that, if the parties are referred to the Mediation & Conciliation Center, there is a possibility of settlement being arrived at.

9. Accepting the said submission, the petitioner is directed to surrender before the Trial Court within two weeks from the date of receipt of a copy of this order and on such surrender, he shall be released on bail under section 436 Cr.P.C. on he executing a bond for Rs.10,000/- with two sureties on the same day. Thereafter, the Trial Court is directed to send the parties to the local Legal Services Authority or the Mediation and Conciliation Center and the Mediation process should be completed within one month from the date of such reference by the Trial Court. In the event of failure of Mediation process, the Trial Court shall dispose of the case within six months thereafter, provided the accused cross examines the witnesses on the same day they are examined-in-chief as directed by the Supreme Court in Vinod Kumar vs. State of Punjab [2015(1) MLJ (Cr1.) 288].

10. In the result, the Criminal original petition is dismissed with the above directions. Consequently, connected miscellaneous petitions are also closed.

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

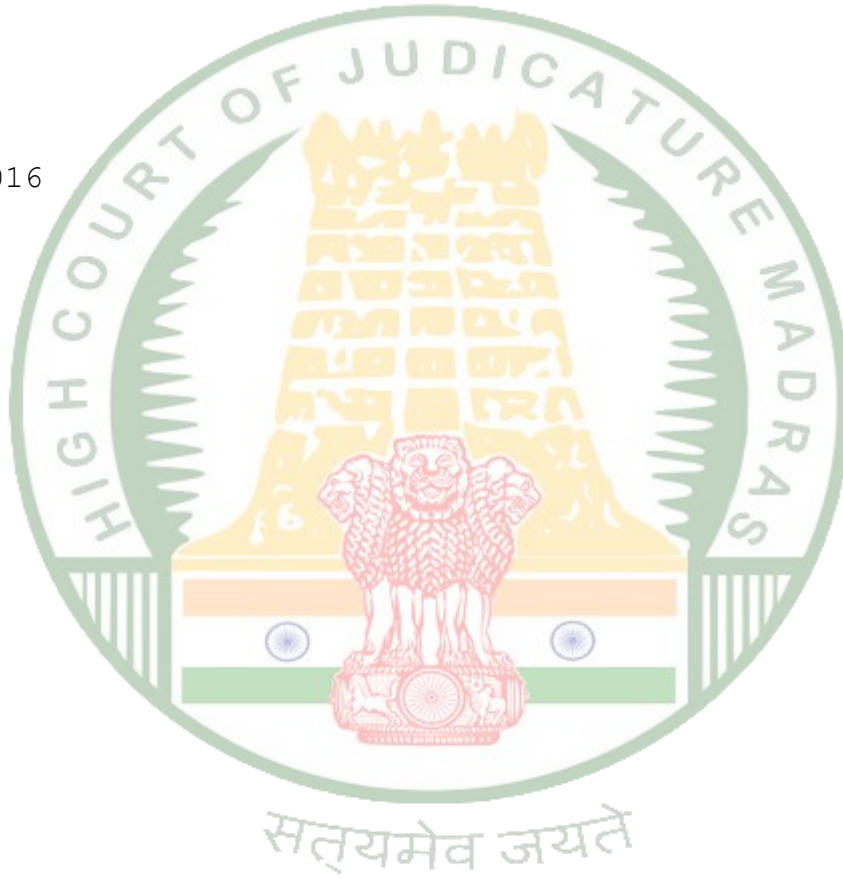
To

1.The Judicial Magistrate
Arakonam Vellore District

+1 cc to Mr.D.Rajasekar Advocate sr 68183/16

Cr1.O.P.No.25309 of 2016

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