

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Crl.O.P.No.6702 of 2016
and
Crl.MP.Nos.3480 and 3481 of 2016

K.L.Ramamoorthy

... Petitioner

Vs.

D.Rathi Devi

... Respondent

Prayer:-Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in C.C.No.2988 of 2015 on the file of the learned Fast Track Court-II, Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioner : Mr.T.C.Sajith Babu

ORDER

The petitioner has come forward with this petition for quashing the complaint in C.C.No.2988 of 2015 pending on the file of the learned Metropolitan Magistrate, Fast Track Court-II, Egmore, Chennai.

2.Learned counsel appearing for the petitioner submitted that the respondent/complainant issued a notice on 29.10.2014 stating that the petitioner has borrowed a sum of Rs.5 lakhs after executing a mortgage deed and for repayment of the amount, he issued a cheque for Rs.25,000/- dated 14.10.2014. When the cheque was presented for encashment, it was returned with an endorsement "insufficient funds". But no complaint has been preferred under Section 138 of Negotiable Instrument Act. Subsequently, the respondent/complainant issued another notice dated 12.08.2015, wherein it was stated that for the same mortgage deed, the petitioner has issued a cheque for Rs.2,50,000/- dated 20.07.2015 and when it was presented for encashment, it was returned with an endorsement "insufficient funds". After issuance of statutory notice, the respondent filed a complaint. He would also submit that there is no legally subsisting liability and there is no averment in the

petition to take cognizance of offence under Section 138 of Negotiable Instrument Act. Hence, he prayed for quashing the proceedings in C.C.No.2988 of 2015.

3.At the time of admission, argument of the learned counsel for the petitioner is heard in length.

4.The respondent as a complainant filed a complaint against the petitioner stating that the petitioner borrowed a sum of Rs.5 lakhs and executed an unregistered mortgage deed on 10.05.2013 in respect of the property which was purchased by him in Document No.2249/1991. The petitioner has repaid some amount and for the remaining amount, he issued a cheque for Rs.2,50,000/- on 20.07.2015. When it was presented for encashment, the same was returned with an endorsement "insufficient funds" on 27.07.2015. After issuance of statutory notice, the present complaint has been preferred.

5.It is pertinent to note that after receipt of notice, the petitioner neither repaid the amount nor sent any reply. The only question raised by the petitioner is that there is no averment to take cognizance of offence under Section 138 of Negotiable Instrument Act. On perusal of the complaint itself, it was specifically stated that the cheque has been issued on 20.07.2015, it was presented for encashment and the same was returned as insufficient funds on 21.07.2015. Statutory notice has been issued in time and complaint has also been given in time. In such circumstances, the argument advanced by the learned counsel for the petitioner does not merit acceptance.

6.At this juncture, it is appropriate to incorporate Section 138 of Negotiable Instrument Act, which is as follows:

138.Dishonour of cheque for insufficiency, etc., of funds in the account.

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice

the amount of the cheque, or with both:
Provided that nothing contained in this section shall apply unless-

(a) the cheque has been, presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

7. In the present case, the cheque has been presented for encashment within three months from the date of issuance of the cheque, statutory notice has been issued within thirty days and after acknowledgment, complaint has been filed within thirty days. Hence, the ingredients of Section 138 of Negotiable Instrument Act has been prima facie made out. Further, whether the cheque has been issued for legally subsisting liability is a question of fact and that can be decided only at the time of trial and not in the quash petition. The main grievance of the petitioner is that even though the respondent has issued a notice on 29.10.2014 in respect of the cheque for Rs.25,000/- dated 14.10.2014, he has not preferred any complaint. But, merely because the respondent has not preferred any complaint in respect of the previous cheque which was issued on 14.10.2014 is not a ground for quashing the present complaint in C.C.No.2988 of 2015. Accordingly, the Criminal Original Petition deserves to be dismissed as devoid of merits and it is hereby dismissed.

8. In the result, the Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

cse

To

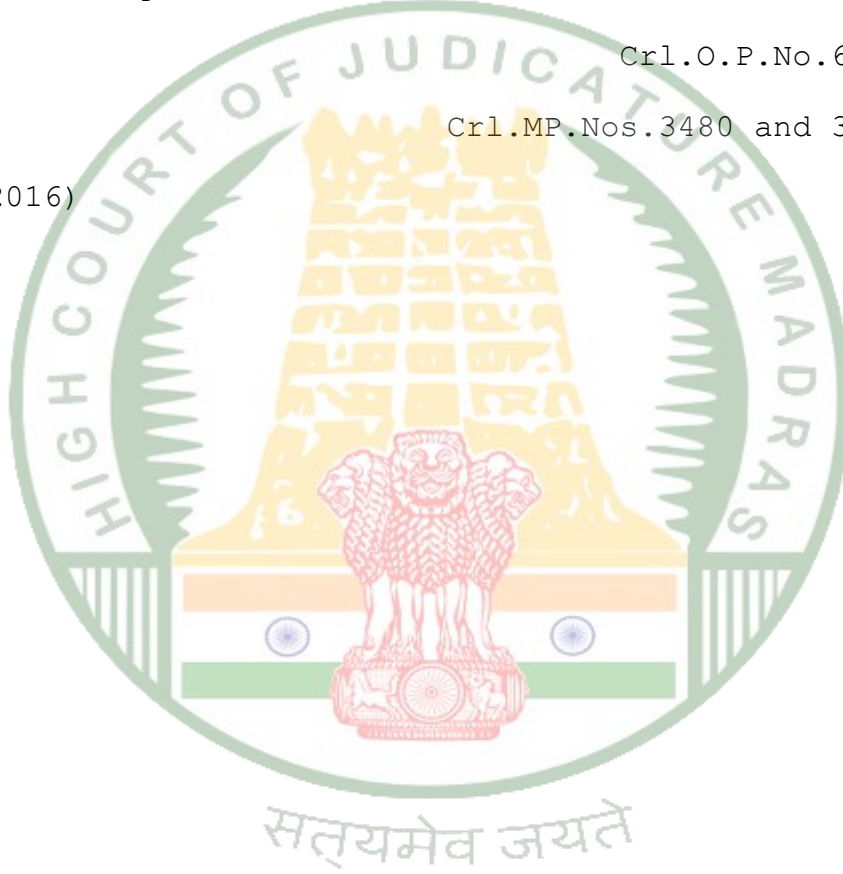
1. The Metropolitan Magistrate,
Fast Track Court-II,
Egmore, Chennai
2. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.T.C.Sajith Babu, Advocate, S.R.No.19086

CrI.O.P.No.6702 of 2016
and

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KK(CO)
CA(13/04/2016)



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