

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 11..11..2016

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Criminal Original Petition No.7380 of 2016

and

Crl.M.P.Nos.3883 and 3884 of 2016

Mrs.Shilpa Darshan Kumar

... Petitioner

-Versus-

M/s.Dugar Finance and Investments Pvt. Ltd.,
Rep. by its Vice President Prashanth Jain,
Having Office at No.123, Dugar Towers,
Marshalls Road,
Egmore, Chennai 600008.

... Respondent

Prayer: This petition is filed under Section 482 Cr.P.C. praying to call for the entire records relating to the case in C.C.No.6567 of 2015 pending on the file of the XIV Metropolitan Magistrate, Fast Track Court-II, Egmore, Chennai and to quash the same.

For Petitioner : Mr.P.Solomon Francis

ORDER

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

2. The complainant has launched a prosecution in C.C.No.6567 of 2015 before the learned XIV Metropolitan Magistrate, Chennai, for an offence under Section 138 of The Negotiable Instruments Act against the accused and on transfer, the said case is now pending before the learned Judicial Magistrate, Fast Track Court-II, Egmore, Chennai.

3. It is the case of the complaint that the accused borrowed a sum of Rs.50,00,000/- as loan from the complainant on 20.03.2015 and in discharge of her liability, she had issued the cheque in question for the said sum drawn on State Bank of India, Nungambakkam Branch in favour of the complainant. When the complainant presented the cheque in

was returned unpaid for insufficiency of funds. The complainant issued a statutory notice dated 05.10.2015 and thereafter has launched the prosecution on the failure of the accused to comply with the demand. Challenging the prosecution the accused is now before this court with the present original petition.

4. The learned counsel for the accused submitted that the cheque in question was not presented by the complainant and that the bank has issued a letter dated 02.07.2016 wherein the bank stated as follows:-

"We have to advise that the above cheque No. for Rs.50,00,000/- favouring Dugar Finance and Investments Ltd., has apparently not been presented through clearing as per our records as there is no reflection in the statement of accounts"

5. That apart, the learned counsel for the accused submitted that there is no legally enforceable debt on the part of the accused and hence, the prosecution is a clear abuse of process of law. He also fairly submitted that complainant has been examined in chief and the accused has also cross examined the complainant. Only thereafter, the accused received the documents filed in additional typed set of papers before this court which he wanted to confront the complainant with.

6. Admittedly, the trial in this case has begun. Whether the communication dated 02.07.2016 has been issued by the State Bank of India or not, is a question of fact which cannot be gone into in a petition under Section 482 of Cr.P.C. It is for the accused to raise the issue before the court below during trial.

7. In the result, the original petition is dismissed with liberty to the accused to raise all the points before the trial court. The accused may also file a petition under Section 311 of Cr.P.C., if so advised, to recall P.W.1, for the purpose of confronting him with the documents relied on him. Such petition shall be filed by the accused within a period of two weeks from the date of receipt of a copy of this order. On filing such petition with satisfactory reasons, the trial court is directed to pass appropriate orders on the same on merits. The accused shall surrender before the trial court and furnish a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) without sureties under Section 88 of Cr.P.C. Consequently, connected MPs are closed.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

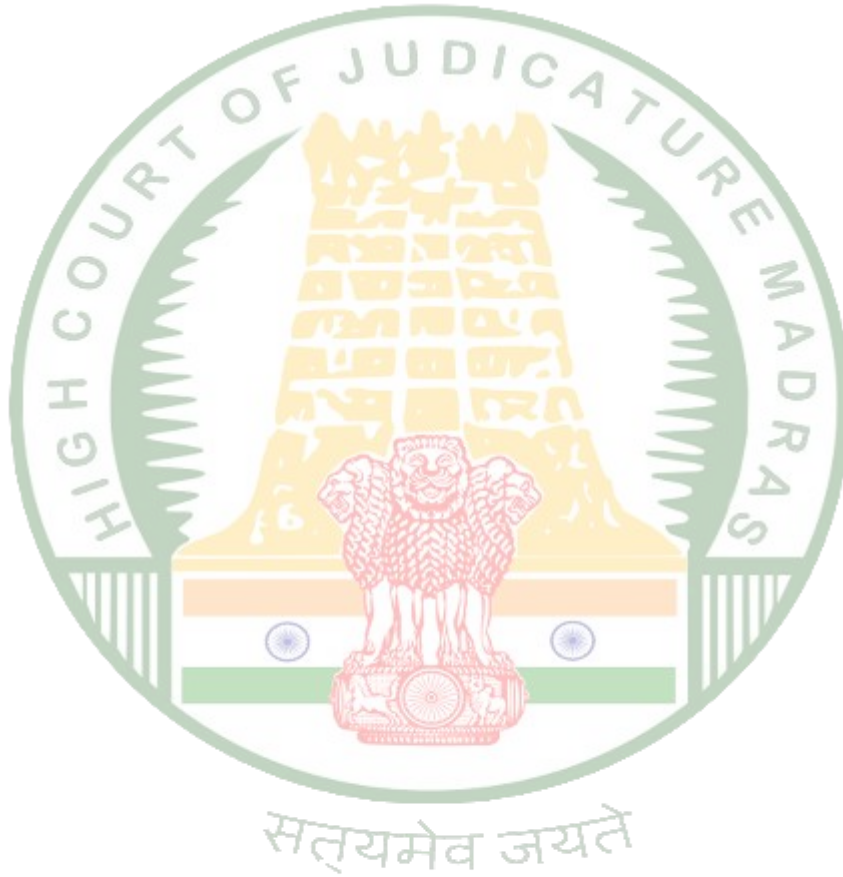
To

1.The XIV Metropolitan Magistrate,
Fast Track Court-II, Egmore, Chennai.

1 cc to Mr.P. Solomon Francis, Advocate, Sr. 65214

CrI.O.P.No.7380 of 2016

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