



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2016

CORAM

THE HON'BLE MR.JUSTICE R.SUBBIAH

Crl.O.P. (MD) No.824 of 2011

and

M.P. (MD) .Nos.1 & 2 of 2011

P.A.Gurunathan

...Petitioner/Accused (single)

-vs-

Kasirajan

... Respondent/Complainant

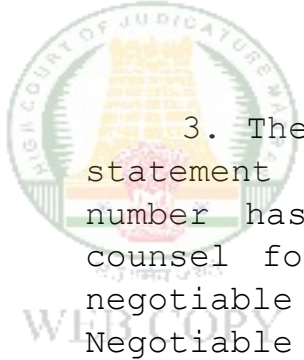
Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., praying to call for the entire records in S.T.C.No.853 of 2010 on the file of the learned Judicial Magistrate, Ambasamudram, Tirunelveli District and quash the same.

For Petitioner : Mr.R.Anand
For Respondent : Mr.K.Prabhu
for M/s.Kathirvelu Associates

O R D E R

This criminal original petition has been filed seeking to quash the proceedings in S.T.C.No.853 of 2010 on the file of the learned Judicial Magistrate, Ambasamudram, Tirunelveli District.

2.The petitioner is an accused in the complaint filed by the respondent under Section 138 of the Negotiable Instruments Act. The allegation in the complaint is that the petitioner/accused herein had borrowed a loan from the respondent / complainant to the tune of Rs.9 lakhs and for the purpose of repaying the same, the petitioner has issued a cheque bearing No.900417 on 10.03.2010. When the said cheque was presented by the respondent / complainant on 16.06.2010 for encashment, the same was returned with an endorsement "funds insufficient". Hence, the respondent / complainant issued statutory notice to the petitioner on 21.06.2010. Since the petitioner has not complied with the statutory notice, the respondent / complainant preferred a complaint under Section 138 of the Negotiable Instruments Act. Seeking to quash the said complaint, the petitioner has come up with this Criminal Original petition.



3. The only ground raised in the petition is that in the sworn statement recorded by the learned Judicial Magistrate, the cheque number has not been mentioned. Hence, according to the learned counsel for the petitioner, without there being any reference of negotiable instrument, the offence under Section 138 of the Negotiable Instruments Act cannot be said to have been made out and hence, the complaint is liable to be quashed.

4. The learned counsel for the respondent / complainant submitted that on the very same ground, the petitioner/accused filed a petition under Section 203 Cr.P.C. in CrI.M.P.No.10532 of 2010 and the same was dismissed by the learned Judicial Magistrate, Ambasamuthram, by order dated 22.11.2010. Suppressing the said fact, the present quash petition has been filed by the petitioner. Thus, he prays for dismissal of the petition.

4. Admittedly, the respondent / complaint has filed the complaint mentioning the cheque number, along with a copy of the cheque stated to have been given by the petitioner. The omission to mention the number of the cheque in the sworn statement cannot be taken serious note of. The ground raised by the petitioner does not serve as a ground to quash the complaint. There is no merit in the petition. Hence, this Criminal Original Petition is liable to be dismissed and accordingly, dismissed. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To
The Judicial Magistrate,
Ambasamudram,
Tirunelveli District.

+1cc to Mr.K.Prabhu ,Advocate, SR.No.81325

CrI.O.P. (MD) No.824 of 2011
16.12.2016

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