

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**Crl.O.P No.10385 of 2011
and
M.P.No.1 of 2011**

R.Bharath

... Petitioner

VS.

S.Rajinikanth

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.646 of 2011, on the file of the learned XVIIth Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioner : Mr.K.Natarajan

For Respondent : Mr.S.Udayakumar

JUDGMENT

The petitioner has filed this Criminal Original Petition to call for the records in C.C.No.646 of 2011, on the file of the learned XVII of the Metropolitan Magistrate , Saidapet, Chennai and the quash the same.

2.A complaint has been filed by the respondent/complainant against the petitioner herein under Section 138 of the Negotiable Instruments Act, ("herein after referred to as "the Act") before the learned XVII Metropolitan Magistrate, Saidapet, Chennai and the same has been taken on file as Calendar Case No.646 of 2011. The said complaint has been filed in respect of the dishonor of the cheque bearing No.060936, dated 11.07.2010 for Rs.1,50,000/-.

3.The petitioner contends that the Learned Magistrate ought not to have taken cognizable of complaint in the absence of service of statutory notice under Section 138(b) of N.I. Act, on the petitioner. The other contends of the petitioner is that the cheque in question was not issued to discharge the legally enforceable of debt.

4.According to the petitioner the cheque was issued by his brother Mr.Senthilnathan to the respondent herein only for security purpose. If at all any legally enforceable debt by the respondent, it can be only against the above said Mr.Senthilnathan and not against the petitioner herein. When there is no legally enforceable debt against the petitioner herein, the respondent cannot enforce the same against the petitioner herein by filing the above Calendar Case under Section 138 of Negotiable Instruments Act.

5.Further, it is contended on the side of the petitioner that unless a statutory notice is served, as contemplated in the Act, no cause of action will be arise for filing the complaint under Section 138 of Negotiable Instruments Act.

6.Counter in the said submissions, it is contended by the learned counsel for the respondent that statutory notice sent by the respondent was refused by the petitioner and the same was returned on 19.08.2010, with an endorsement as "Left". Therefore it cannot be said that no statutory notice was served on to petitioner herein. The return of notice of with the endorsement by the postal authorities as left is amounts to service of notice.

7.The learned counsel for the respondent further submit that even assuming if no notice was served on the petitioner, since the petitioner has not made payment of amount covered by the dishonored cheque within 15 days from the date of receipt of summon from the Court, the petitioner cannot contend that there was no proper service of notice.

8.I heard Mr.K.Natarajan, learned counsel appearing for the

petitioner and Mr.S.Udayakumar, learned counsel appearing for the respondent and materials available on records are perused.

9.At the outset, it has been pointed out that in the complaint it has been stated that statutory notice was sent to the petitioner. Therefore, the question of service of statutory notice on the petitioner does not arise. Further, the cheque in question dishonored was signed by the petitioner herein. That apart in the back side of the mutual agreement dated 11.07.2010 it has been clearly mentioned that the cheque in question was issued by the petitioner herein to discharge the debt incurred by his brother Mr.Senthilnathan, in other words the cheque was issued for the balance sale consideration of Rs. 1,50,000/- for the purchase of the hotel by the petitioner's brother to run the hotel business. Therefore this Court find no infirmity in issuing summon to the petitioner herein and taking cognizance of offence punishable under Section 138 of Negotiable Instruments Act. Further, there is a presumption in favour of the respondent herein under Section 138 of the Negotiable Instruments Act and the presumption could be rebutted only by the accused and the same can be done only during the course of the trial.

10.In view of the above discussion, this Court is not able to accept the contentions of the learned counsel for the petitioner herein. Hence,

this Criminal Original Petition is liable to be dismissed.

11.In the result, this Criminal Original Petition is dismissed and the proceedings in C.C.No.646 of 2011 on the file of the learned XVII of the Metropolitan Magistrate, Saidapet, Chennai, is ordered to continue further and in any event, the same shall be disposed of within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

04.10.2017

vs

Speaking order
Index : Yes

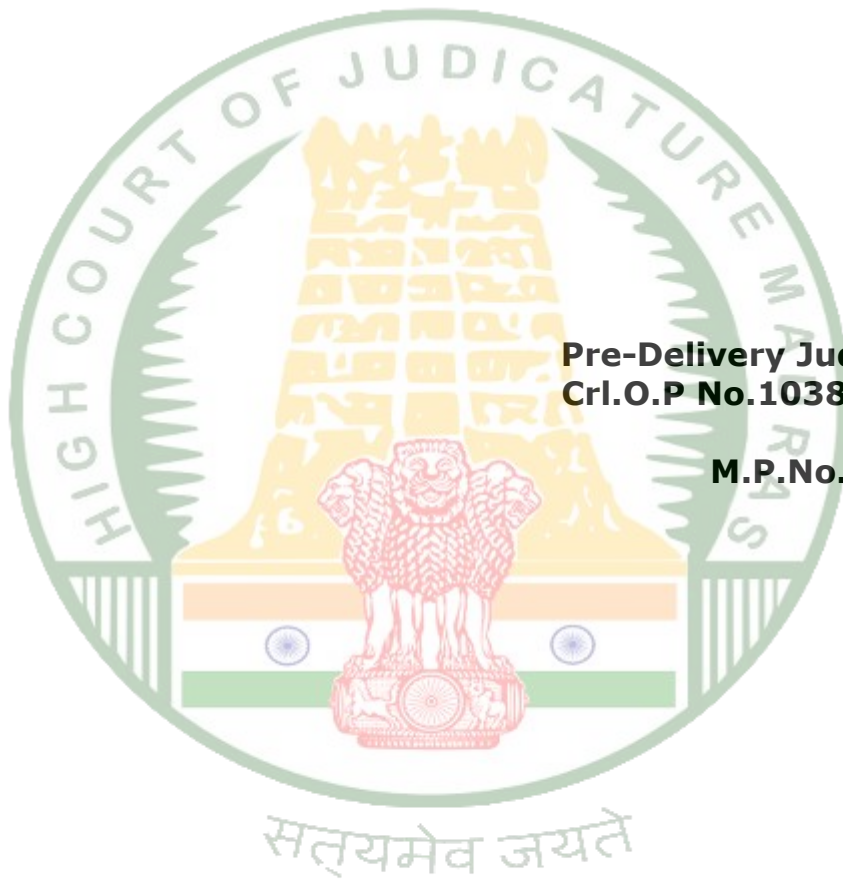
To

The XVII of the Metropolitan Magistrate,
Saidapet, Chennai.

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M.V.MURALIDARAN,J.

VS



**Pre-Delivery Judgment in
Crl.O.P No.10385 of 2011
and
M.P.No.1 of 2011**

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