

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2017

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No. 552 of 2017

and Crl.MP.Nos.401 and 402 of 2017

T.Rajendran

..Petitioner

Vs.

Food Corporation of India
(South Zone) Employees Co-operative Society Ltd.,
rep. By Mr.R.Sathyanarayanan
(Asst.Grade II) & Power of Attorney,
Periyamet,
Chennai.

..Respondent

Prayer : Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records and quash the proceedings in C.C. No.698 of 2016 on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai.

For Petitioner : Mr.M.Kumar

For Respondent : Mr.P.Anbarasan

ORDER

The prayer sought for in the present petition is to call for the records and quash the proceedings in C.C. No.698 of 2016 on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai.

2. Heard both sides.

3. The main ground taken by the petitioner is that as on date of the cheque, there was no legally enforceable debt. It is seen that on 24.10.2015, the petitioner was suspended pending charges, since he was accused of having involved in misappropriation, pursuant to which, a police complaint came to be filed on 29.10.2017.

4. The learned counsel for the petitioner submits that in the averments made in the police complaint dated 29.10.2015 and other exchange of notices, there was no mention about the issuance of the cheque. Hence, he seeks for quashing of the proceedings on the ground that there was no legally enforceable debt.

5. The learned counsel for the respondent, on the other hand submitted that as per the averments made in the complaint, he had clearly spelt out the alleged offences and made out prima facie case under Section 138 NI Act. According to the learned counsel for the respondent, the petition does not require consideration.

6. I have given careful consideration to the submissions made by the respective counsels and perused the materials available on record.

7. The ground raised by the learned counsel for the petitioner that there was no legally enforceable debt as on date, is untenable, for the reason that the petitioner does not dispute the fact that the cheque was signed by the petitioner. The only defence by the learned counsel for the petitioner is that there were two other persons who are also involved in the crime and that they have only given a blank cheque. The question of liability is not disputed, but only the quantum is in dispute. Whether the amount revealed in the cheque is correct or not is a factual question, which can only be elucidated after due trial. As such, the ground that there was no pre-existing liability, cannot be sustained.

8. The learned counsel for the petitioner further submits that there is also an arbitration proceedings initiated and therefore the present proceedings under Section 138 of NI Act need not be proceeded with. The above ground also cannot be sustained, since the arbitration proceedings is distinct from the proceedings under Section 138 of the NI Act. If at all the petitioner is disputing the quantum of his liability, he can work out the same in the Arbitration proceedings. In respect of the other grounds raised by the learned counsel for the petitioner, I am of the view that they are factual in nature and can very well be raised at the time of trial.

9. In the result, I do not find merits in the submissions made by the learned counsel for the petitioner, hence the criminal original petition stands dismissed. Consequently, the connected Miscellaneous Petitions are closed.

Assistant Registrar
Dt.

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Sub Assistant Registrar

To

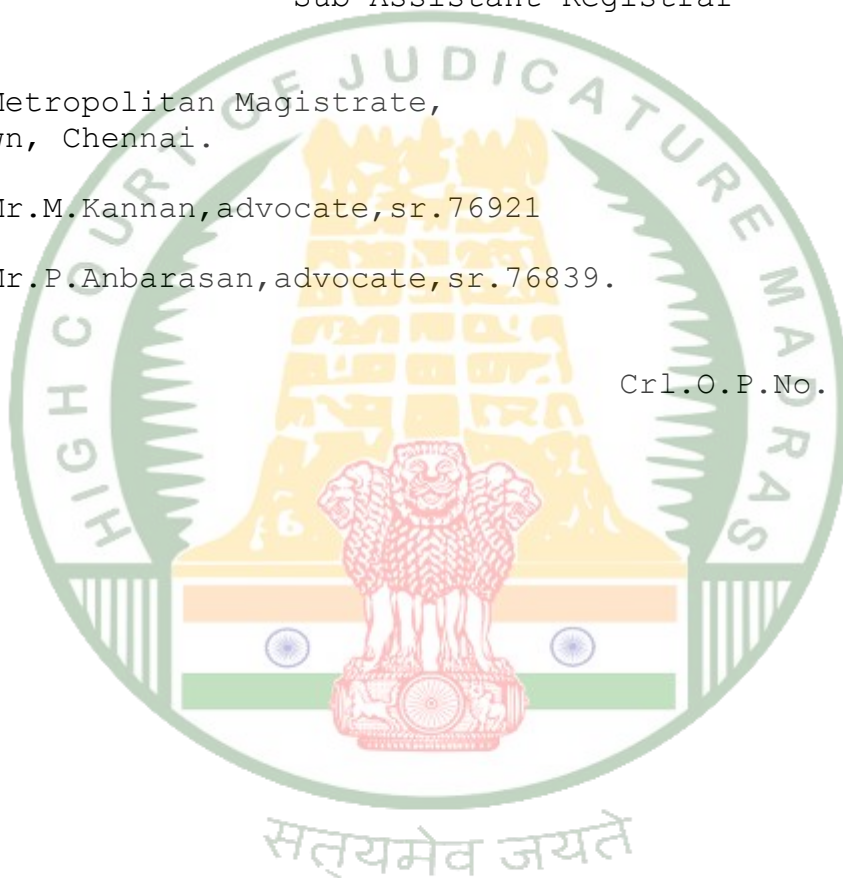
The VIII Metropolitan Magistrate,
George Town, Chennai.

+1 cc to Mr.M.Kannan,advocate,sr.76921

+1 cc to Mr.P.Anbarasan,advocate,sr.76839.

Krd 22/11

Crl.O.P.No. 552 of 2017



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