

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED: 07.08.2017****CORAM:****THE HONOURABLE MR. JUSTICE M.S.RAMESH**

Crl.O.P.Nos.5887 & 6335 of 2017
and Crl.M.P.Nos.4413,4414,8007, 4669 & 4670 of 2017

Mr.Rakesh P Sheth
Managing Director
M/s. Karismaa Foundations Pvt Ltd.,
No.340, Kapaleeswar Nagar,
I South Main Road,
Neelankarai,
Chennai-600 115.

.. Petitioner in
Crl.O.P.No.5887 of 2017

Mr.Premsai Chundur
(Former Non-Executive Director)
M/s. Karismaa Foundations Pvt Ltd.,
No.32, Sriman Srinivasa Road,
Alwarpet,
Chennai-600 018.

.. Petitioner in
Crl.O.P.No.6335 of 2017

Vs.

M/s. Narendra Properties Ltd.
Rep. by its Director (Operations)
Mr. Chirag Maher
Having its office at 2A, III Floor,
Wellington Estate,
53 Ethiraj Salai,
Egmore, Chennai - 600 105.

.. Respondent in
both Crl.O.P's

Prayer in CrI.O.P.No.5887 in 2017: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in C.C.No.3187 of 2016 pending on the file of the learned XIV Metropolitan Magistrate, Egmore and quash the same.

Prayer in CrI.O.P.No.6335 in 2017: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in C.C.No.3187 of 2016 pending on the file of the learned XIV Metropolitan Magistrate, Egmore and quash the same.

For Petitioners : Mr.Nithyaesh Vaibhav

For Respondent : Mrs.Rita Chandrasekar
for Mr.Aiyar & Dolia

COMMON ORDER

Heard Mr.Nithyaesh Vaibhav, learned counsel for the petitioners as well as Mrs.Rita Chandrasekar, learned counsel for the respondent.

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2.One of the main ground raised by the petitioners is that the impugned cheque which is the subject matter of the proceedings

under Section 138 of the Negotiable Instruments Act, 1881 was of the year 2013 and that it was practically impossible that the same could be issued in the year 2016.

3. According to the petitioners, their account with Kotak Mahindra Bank was closed in the year 2013 itself and alleged that the cheque which was stolen from their office has been misused by the complainant.

4. The learned counsel for the respondent/defacto complainant on the other hand submitted that the impugned cheque was given towards the outstanding loan amount by the petitioners to the respondent and in view of the fact that the petitioners have executed a promissory note and letter of confirmation of the outstanding loan amount, the grounds raised by the petitioners have to be rejected.

5. I have given careful consideration to the submissions made by the learned counsel on either side.

6. As submitted by the learned counsel for the respondent, it is

seen that the complainant/respondent had transferred two sums of Rs.1 Crore and Rs.25 lakhs on 01.02.2012 and 20.03.2012 respectively to the petitioners herein who are the Managing Director and Former Non Executive Director of M/s.Karishmaa Foundations Private Limited, Chennai respectively. The complainant/respondent has also produced the copies of the promissory note executed by the petitioners herein as well as their letter of confirmation, confirming that there was an outstanding loan amount of Rs.1 Crore 25 lakhs as on 31.03.2015. The fact as to whether the cheque was misused by the complainant/respondent or not is a matter to be examined during the course of trial and this Court, exercising its power under Section 482 Cr.P.C., may not be justified in giving a finding on this fact. Furthermore, the petitioners herein, in their reply to the notice of dishonour had admitted that the cheque was issued for security purpose. As such, the ground raised by the petitioners that the cheque was lost and misused by the complainant/respondent is unfounded. The petitioners' police complaint dated 02.03.2017 also cannot be given much reliance since the averments therein are contrary to their statement in their reply notice dated 29.02.2016. Nevertheless, it is always open to the petitioners to raise all these grounds at the time of trial and

arguments before the learned XIV Metropolitan Magistrate, Egmore, Chennai. It is also made clear that the finding rendered by this Court shall not be cited as a fact finding precedent before the trial Court.

7.In the result, both the Criminal Original Petitions stand dismissed. The petitioners are at liberty to raise all the grounds raised in these petitions before the learned XIV Metropolitan Magistrate, Egmore, Chennai in C.C.No.3187 of 2016. Consequently, connected Miscellaneous Petitions are closed.

07.08.2017

Index:Yes/No

DP

To

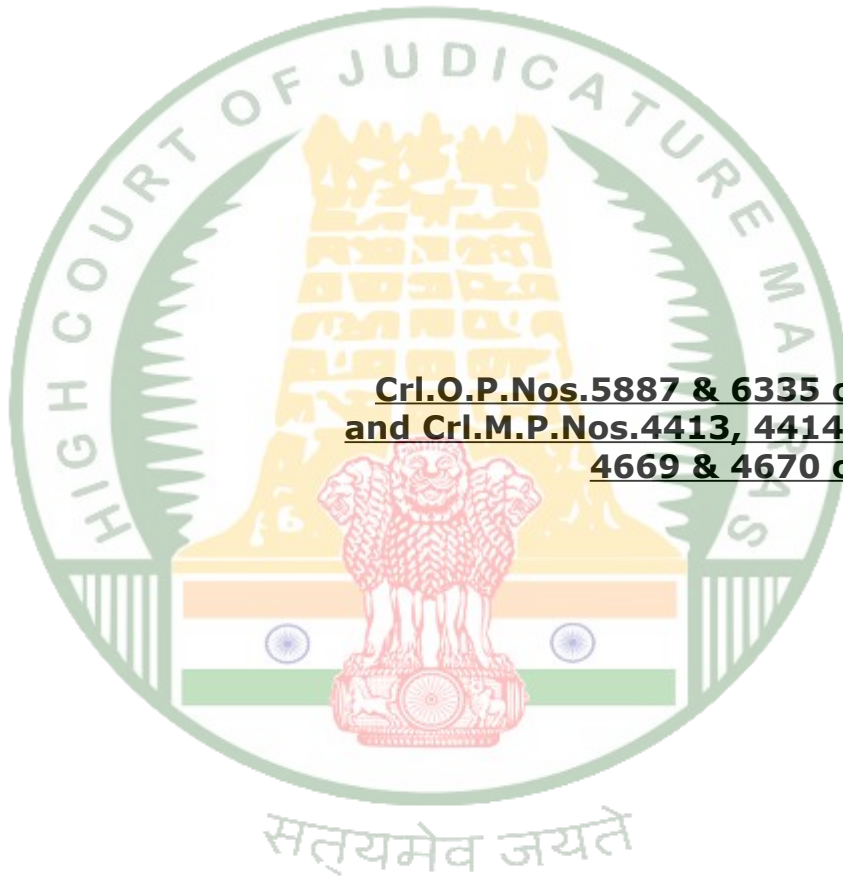
1.The XIV Metropolitan Magistrate,
Egmore.

2.The Public Prosecutor,
High Court, Madras.

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M.S.RAMESH.J,

DP



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