

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2017

CORAM :

The Hon'ble Mr.JUSTICE M.SUNDAR

Criminal O.P.No.1640 of 2011

and

M.P.Nos.1 and 2 of 2011

1.M/s.Sarathas,
rep by its Partners,
S.Mohanasundaram & S.Saravanan
141 Jawaharlal Nehru Street,
Puducherry-605 001.

2.S.Mohanasundaram

3.S.Saravanan

.. Petitioners

Vs.

Sivapalani

.. Respondent

Petition filed under Section 482 of Criminal Procedure Code seeking to call for the records relating to C.C.No.101 of 2007 on the file of the Court of Judicial Magistrate No.1, at Puducherry and quash the same.

For Petitioners : No appearance

For Respondent : No appearance

ORDER

Today, when the matter was called, there was no representation on both sides. In other words, there was no representation for the petitioners as

2 It is seen from the records that the Criminal Original Petition being Crl.O.P.No.1640 of 2011 before me is of the year 2011 and the same has been filed on 20.01.2011 to be precise.

3 Most importantly, the criminal original petition has been filed with a prayer to quash a criminal case being C.C.No.101 of 2007 on the file of the Court of Judicial Magistrate-I, Puducherry. The criminal case in the trial court that is being sought to be quashed is of the year 2007 and therefore, more than a decade old. In my view, adjourning such matters (given the length of pendency and nature of the matter) owing to non appearance of counsel would only lead to avoidable pendency and avoidable addition to arrears.

4 Therefore, I consider it appropriate to peruse the papers and dispose of the criminal original petition on the basis of papers placed before me.

5 Accused Nos.1,2 and 3 before the Trial Court in C.C.No.101 of 2007 are petitioner Nos.1,2 and 3 respectively before me. To be noted, the trial court is the Court of Judicial Magistrate-I, Puducherry.

6 The lone complainant before the trial court is the sole respondent before me.

7 For the sake of convenience and clarity, parties are referred to by their respective ranks before the trial court, which means petitioner Nos.1,2 and 3 before me are referred to as Accused Nos.1,2 and 3 respectively. The petitioners are collectively referred to as 'all the accused'.

The sole respondent before me is referred to as 'complainant'.

8 The complainant has filed a private complaint under Section 200 of the Code of Criminal Procedure, 1973 (2 of 1974) (hereinafter referred to as 'Cr.P.C.' for brevity) against all the accused alleging offences under Sections 138 and 142 of the Negotiable Instruments Act, 1881 (26 of 1881) (hereinafter referred to as "NI Act" for the sake of brevity).

9 Subject matter of the criminal complaint before the trial court is a cheque for a sum of Rs.5,40,000.00 drawn on Union Bank of India, Puducherry bearing No.847600. The date written on the cheque is 15.6.2006. This cheque was drawn in favour of the complainant. The cheque was presented for collection by the complainant on 21.09.2006 and the same was returned on 22.9.2006 with bankers' endorsement "exceeds arrangement".

10 It is the case of the complainant that the above said cheque was issued towards discharge of a part of loan / borrowing and interest thereon.

11 Summons were issued by the trial court. All the accused have filed the instant criminal original petition before me under Section 482 of Cr.P.C. with a prayer to quash the above said criminal complaint in the trial court.

12 From the criminal original petition, it is seen that two main grounds have been raised by all the accused. The two main grounds are as follows :

“(a) A statutory notice under Section 226(3) of the Income Tax Act, 1961 (hereinafter referred to as “IT Act” for brevity) was issued on 20.07.2006 to accused No.3 and according to all the accused, this notice

imposes a bar on accused No.3 to pay the cheque amount qua the above said negotiable instrument which is subject matter of the criminal complaint in the trial court.

(b) The said cheque was issued individually by accused No.3 and therefore, the same was legally enforceable only against Accused No.3.”

13 A perusal of the criminal original petition before me shows that all the accused, who have filed the petition do not dispute that the above said cheque was, in fact, issued. In other words, signature in the cheque is not disputed. All that is disputed is that the date was filled up later by the complainant and presented. To be precise, the complainant filled up 15.06.2006 as the date and presented it in the bank on 24.9.2006 for collection. (To be noted, in the averments in the instant quash petition, date is mentioned as 24.9.2006, but in the complaint before trial court, date of presentation is mentioned as 21.9.2006). As the signature in the instrument is admitted, it leads to a presumption albeit rebuttable presumption under the NI Act.

14 Further more, law is well settled now that even a blank cheque can be issued qua NI Act as long as the signature of the payer / drawer is contained in the instrument. In this case, signature of accused No.3 in the instrument is not disputed leading to a presumption albeit rebuttable presumption as set out supra.

15 Thereafter, whether it was issued towards a legally enforceable

that there is a legally enforceable debt in the light of admitted position that accused Nos.2 and 3 are partners in Accused No.1 which is a partnership firm and whether the purported statutory notice under the IT Act was issued after the date of issue of the cheque and whether an antedate was entered in the instrument are all matters for trial.

16 I have no doubt in my mind that all three points raised in the criminal original petition are matters for trial. Therefore, I am of the considered opinion that this is not a fit case to quash the private complaint.

17 In the result, Criminal O.P.N.o.1640 of 2011 is dismissed with the following directions :

(a)All questions raised in this criminal original petition are left open for being raised before the Trial Court;

(b)The Trial Court shall consider all points raised in this criminal original petition without being influenced or swayed by anything that is contained in this order.

(c)The Trial Court shall proceed with the trial and dispose of the same as expeditiously as possible and in any event within six months from the date of receipt of a copy of this order as the calendar case is of the year 2007 and is more than a decade old.

Consequently, connected miscellaneous petitions are closed.

03.08.2017

Index : Yes/No

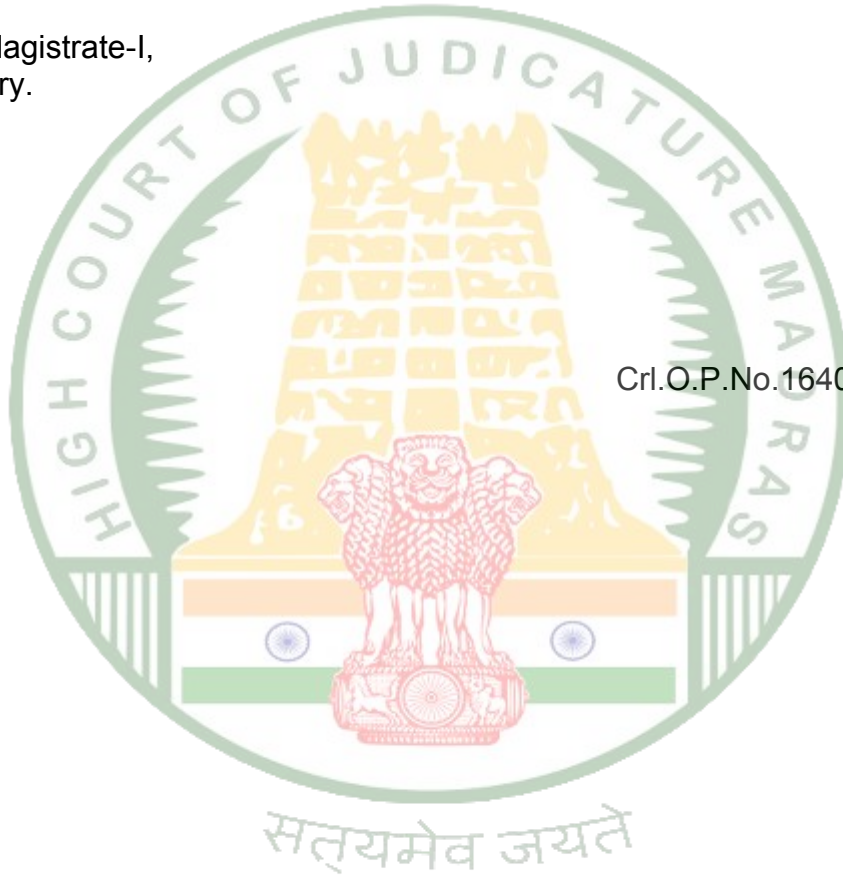
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M.Sundar, J.

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To

Judicial Magistrate-I,
Puducherry.



Crl.O.P.No.1640 of 2011

03.08.2017

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