

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.04.2017

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P.No.18876 of 2011 and

M.P.No.1 of 2011

N.J.Badhur Zaman

.. Petitioner

vs.

M.Mohammad Basheer

.. Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in C.C.No.801 of 2010, pending on the file of the learned Judicial Magistrate Court No.1, Tindivanam and quash the same in respect of this petitioner.

For Petitioner : Mr.S.Ratnasabapathy

For Respondent : No Appearance

JUDGMENT

The petitioner herein facing a private complaint filed by the respondent under Section 200 of Cr.P.C for an alleged offence punishable under Section 138 of Negotiable Instruments Act (herein after referred as 'N.I. Act') towards dishonor of 2 cheques issued by the petitioner by way of this Criminal Original Petition assails the complaint against him as abuse of process of Law.

2.The sum and substance of the petitioner's case is that in actual in respect of a property there was a sale agreement entered between the defacto complainant and one Rajasekar who happen to be petitioner's friend. The above agreement was entered at the instance of one Ram Prakash, Abdul Kadar and Rajasekar. Whereas the said agreement stood subsequently cancelled and consequently there was a demand made by the defacto complainant for a sum of Rs.15,00,000/- paid by him as advance.

3.In turn a sum of Rs.5,00,000/- was paid by the above persons by cash and in as much as for a sum of Rs.10,00,000/- the petitioner being a business friend of the above persons issued two cheques for a sum of Rs.5,00,000/- each on 25.09.2009 and 10.11.2009.

4.Subsequently the petitioner on 26.10.2009 and 20.01.2010 has paid a sum of Rs.3,00,000/- and Rs.1,00,000/- towards the above ten lakh due to him. Towards the balance due amount of Rs.6,00,000/- several demands were made by the complainant. But the amount was unpaid after a long struggle, finally by issuing two cheques, petitioner directed the respondent herein to encash the two cheques issued by him.

5.As per the instruction of the petitioner the above two cheques were presented. But shockingly both the cheques came to be dishonored for want of sufficient funds. Thereupon statutory notice was issued and as even then there was no payment, the complainant/respondent came up with above complaint in C.C.No.801 of 2010 as against the petitioner seeking remedy under N.I. Act.

6.I heard Mr.S.Ratnasabapathy, Learned Counsel for the petitioner and there is no representation on behalf of the respondent.

7.It is the contention of the Learned Counsel appearing for the petitioner that the above complaint is nothing but an abuse of process of law that even according to the complainant the due amount is Rs.6,00,000/- as stated in his notice. Whereas he had presented the cheques for a value of Rs.10,00,000/- mischievously and maliciously. Thus it is his contention that the said cheques are misused when there is no debt or liability and there is no cause of action, warranting prosecution under N.I Act.

8.It is his further contention that the statutory notice is not issued within prescribed time, besides the complaint being filed beyond limitation period in sending the statutory notice. Accordingly he prays to allow this Criminal Original Petition by quashing the private complaint of the respondent as abuse of process of law.

9.On perusal of the case records and as well as the typed set of papers it is seen that though the amount claimed to be due is Rs.6,00,000/- the cheques were presented to the tune of Rs.10,00,000/- by the defacto complainant. The fact of payment of Rs.4,00,000/- also found placed on record, vide the respondent sworn statement. It also remains reflected in the reply notice of petitioner herein dated 10.03.2010.

10.In the said circumstance, this court finds the case of the petitioner is justified claiming that the respondent has approached this court with unclean hands.

11.In other words the respondent cannot exaggerate his claim by misusing the cheque issued by the petitioner herein. In the said circumstance the above complaint if allowed to be proceeded against the petitioner without liability, the same would be an abuse of process of law.

12.The conduct of the respondent claiming Rs.10,00,000/ is completely untenable and found to be a technique to extort money which is impermissible.

13.In view of the foregoing reasons, the Criminal Original Petition stands allowed and accordingly the private complaint in C.C.No.801 of 2010 on the file of the Learned Judicial Magistrate No.1, Tindivanam stands quashed as an abuse of process of law. Consequently, connected miscellaneous petition is closed.

Vs

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

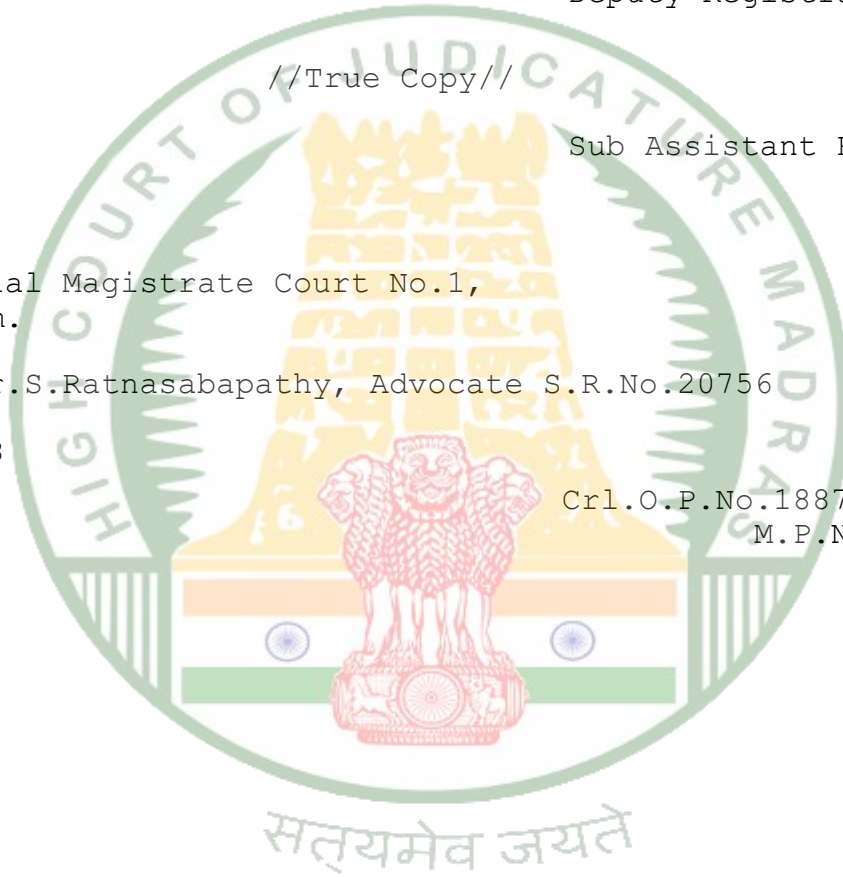
To

The Judicial Magistrate Court No.1,
Tindivanam.

+1cc to Mr.S.Ratnasabapathy, Advocate S.R.No.20756

KR/9/11/18

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