

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.07.2017

CORAM

THE HONOURABLE Mr.JUSTICE M.S.RAMESH

CrI.OP.No.1409 of 2016
and
CrI.M.P.Nos.657 & 658 of 2016

V.Murugeswari

.. Petitioner

Vs

B.Priya

... Respondent

This petition filed under Section 482 of Cr.P.C., praying to call for the records in S.T.C.No.165 of 2015 on the file of the Judicial Magistrate Court No.III, Coimbatore and quash the same as illegal.

For Petitioner : Mr.M.Purushothaman

For Respondent : Mr.Kingsly Solomon

O R D E R

Challenge in the present petition is to quash the proceedings in S.T.C.No.165 of 2015 on the file of the learned Judicial Magistrate No.III, Coimbatore filed under Section 138 of the Negotiable Instruments Act, 1881 by the respondent herein.

2.The only main ground on which the petitioner challenged the present petition is that the notice of dishonour was sent by the respondent to an address to which the petitioner never let in.

3.The learned counsel for the petitioner submitted that non issuance of notice of dishonour vitiated the proceedings in S.T.C.No.165 of 2015 on the file of the learned Judicial Magistrate No.III, Coimbatore and hence, the same is liable to be quashed. In support of his contention, he relied upon the judgment of this Court in S.S.Ummul Habiba, Proprietor, M/s.Alim Autor Supplies, 65, Cumbum Road, Periyakulam Vs. B.Rajendran

reported in 2004 (3) CTC 573 and submitted that the respondent should make specific averments in the complaint that the notice of dishonour was sent only to the address in which the petitioner was residing and that he is evading service. He further submitted that in the light of the judgment cited, in the present case, there is absence of such averments in the complaint and therefore, the proceedings initiated against the petitioner are liable to be quashed.

4.The learned counsel for the respondent submitted that the notice of dishonour was sent to the correct address where the petitioner was residing and prayed to dismiss the petition.

5.I have carefully considered the submissions made on either side and perused the materials available on record.

6.A ground was raised by the petitioner with regard to non service of notice of dishonour and the petitioner herein attempted to substantiate with a judgment of this Court in S.S.Ummul Habiba, Proprietor, M/s.Alim Autor Supplies, 65, Cumbum Road, Periyakulam Vs. B.Rajendran reported in 2004 (3) CTC 573. In the case cited by the learned counsel for the petitioner, it is seen that it was an appeal filed against an order of acquittal of a complaint under Section 138 of NI Act. It is to be noted that the fact as to whether the notice of dishonour was sent to the address where the petitioner was residing is to be determined in the trial. Hence, the ground pointed out by the petitioner can be raised only during the time of trial and the judgment may not be of help to the petitioner to invoke the provision under Section 482 Cr.P.C. for quashing the compliant.

7.In view of the same, I do not find merits in the present petition. Hence, the Criminal Original Petition stands dismissed. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

DP

To

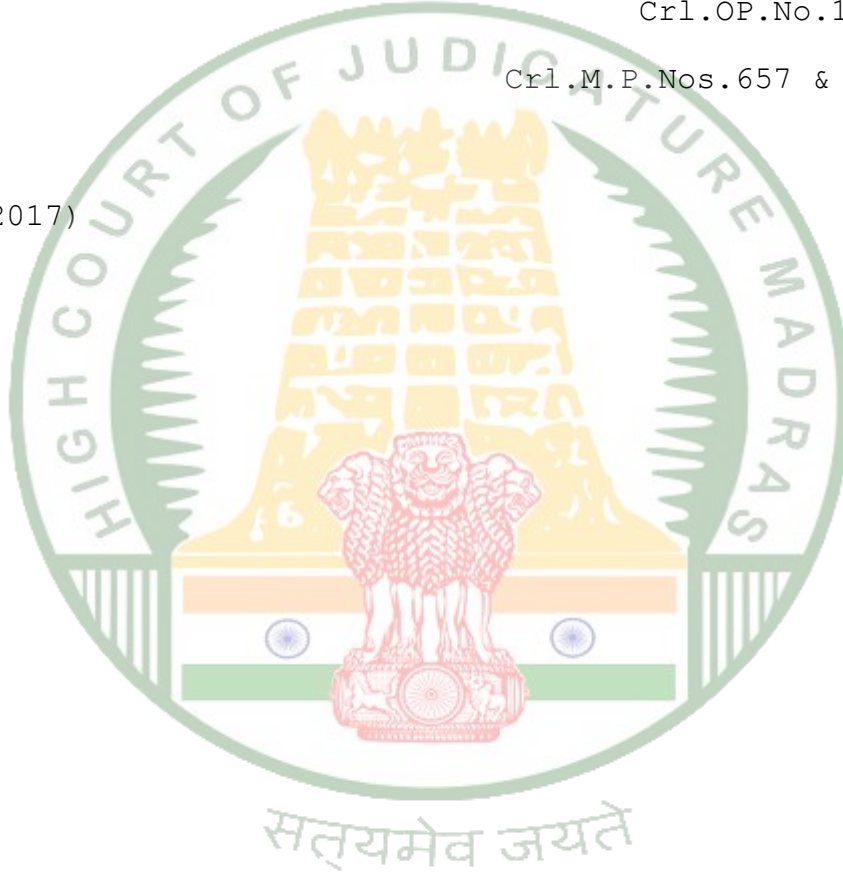
1. The Judicial Magistrate Court No.III,
Coimbatore.

+1cc to M/S.M.Purushothaman, Advocate Sr. 49976

+1cc to M/S.Kingsly Solomon, Advocate Sr. 50178

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RK (CO)
VR(07/08/2017)



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