

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2017

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

CRL.O.P.No.4445 of 2012

&

Crl. MP.No.1 of 2012

V.Gunasekaran ...Petitioner/Accused

-Vs-

D.Sakthivel ...Respondent/complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in C.C.No.210 of 2009 now pending on the file of the Judicial Magistrate No.II, Pondicherry and quash the same.

For Petitioner : Mr.R.Ganesh Kumar

For Respondent : No appearance

O R D E R

This petition is filed to call for the records in C.C.No.210 of 2009 now pending on the file of the Judicial Magistrate No.II, Pondicherry and quash the same.

2. The main grounds raised by the petitioner is that there is no pre-existing liability between the respondent and the petitioner herein. The impugned cheques were not issued by the petitioner.

3. Heard, the learned counsel for the petitioner. Though notice has been served on the respondent and his name printed in the cause list, none appeared on behalf of the respondent.

4. On 06.10.2008, the respondent herein seems to have issued a legal notice of dishonour, alleging that the petitioner borrowed a sum of Rs.5,00,000/- on 12.05.2008 and another sum of Rs.5,00,000/- on 22.05.2008 as hand loan and by way of repayment he had issued two cheques dated 12.05.2008 and 22.05.2008 bearing cheque Nos.0829775 and 0829776 drawn on Andra Bank. Since, the cheques were dishonored for the reasons "payment stopped" a legal notice was issued by the respondent

and on receipt of the notice, the petitioner had given a reply legal notice on 28.10.2008, wherein he had categorically stated that he had no relationship with the respondent herein and that the respondent had certain land dealings with his sister for purchase of the properties, for which these cheques came to be issued. Since there is no pre-existing liability between the petitioner and the respondent herein, the learned counsel had sought for dismissal of the present case.

5. A copy of the impugned cheques were also produced before this Court. I have perused the notice of dishonor as well as the reply notice along with impugned complaint. The impugned cheques were not issued by the respondent, but rather by one Mrs. Nirmala, who is the sister of the petitioner herein. Though, this aspect was brought to the knowledge of the respondent, in his reply notice, he had chosen to array the petitioner herein as an accused in the complaint, without impleading the petitioner's sister namely Nirmala. It is manifestly seen that there is no pre-existing liability between the petitioner and the respondent and the impugned cheques were also issued by the petitioner's sister Nirmala. While that being so the ingredients of Section 138 of the Negotiable Instruments Act have not been made out. Consequently, the petitioner need not be made to undergo the ordeal of trial, since no logical conclusion can be arrived at on the basis of cheques issued by the petitioner's sister in connection with certain civil transactions.

6. Accordingly, this criminal original petition is allowed and the proceeding in C.C.No.210 of 2009 pending on the file of the Judicial Magistrate No.II, Pondicherry is quashed. Consequently miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-V)

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Sub Assistant Registrar

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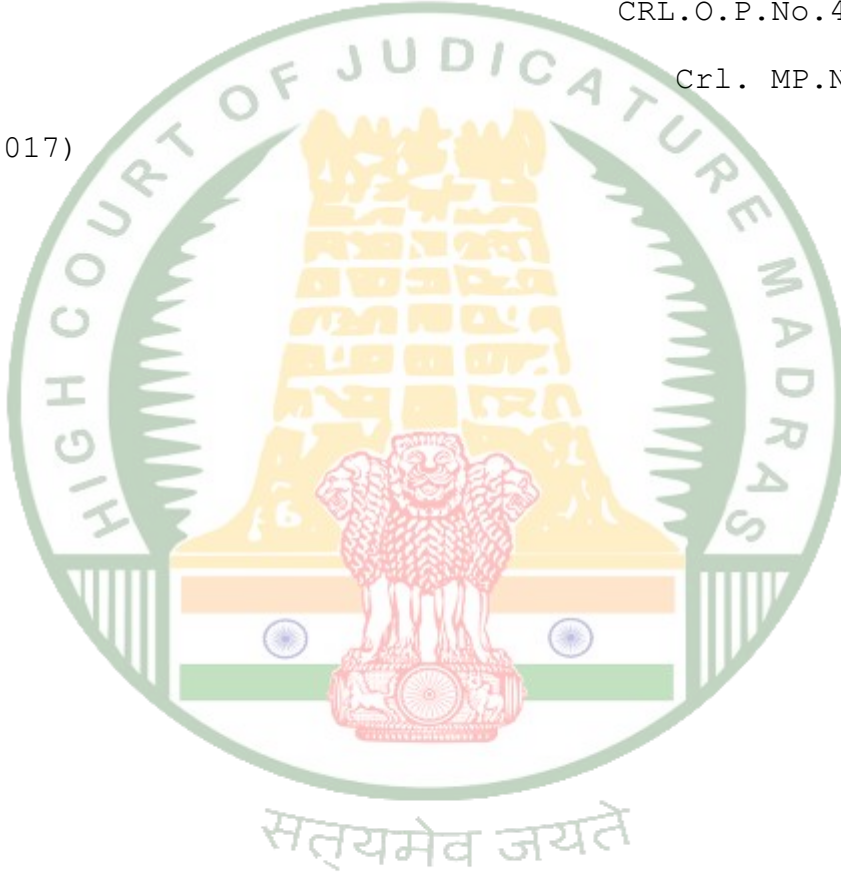
1. The Judicial Magistrate No.II,
Pondicherry.

2. The Public Prosecutor
High Court, Madras.

+1cc to Mr.R. GANESH KUMAR Advocate, S.R.No. 81199

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