

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.08.2017

PRONOUNCED ON : 21.11.2017

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.OP No.21825 of 2010

and

M.P.No.1 of 2010

P.k.Selvaraj

Petitioner

..Vs..

Malarvizhi

Respondent

Prayer :- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in S.T.C.No.500 of 2010 on the file of Judicial Magistrate No.1, Namakkal.

For Petitioner :Mr.G.Jermiah

For Respondent :Mr.P.Paramasivadoss

ORDER

This Criminal Original Petition has been filed under Section 482 Cr.P.C., to call for the records in S.T.C.No.500 of 2010 on the file of Judicial Magistrate No.1, Namakkal.

2. The facts leading to the filing of petition in short, are as follows:-

The 2nd accused is the petitioner herein.

(ii) The learned counsel for the petitioner has submitted that the learned Magistrate has failed to note that Section 138(1) of Negotiable Instruments Act specifically prescribe that 'A person must have drawn a cheque on an account maintained by him in a bank for payment of certain amount of money to another person from out of that amount'.

(iii) In this regard the learned Magistrate has failed to note that the cheque in question has been returned as account closed and since the said Bank account had already been closed, there was no question of the issue of alleged cheque in favour of the respondent on 27.02.2010 and there was no account was maintained by the petitioner as contemplated under the provision of Section 138(1) of Negotiable Instruments Act.

(iv) The learned Magistrate has failed to note that the respondent herein has specifically stated in his complaint in S.T.C.No.500 of 2010 at para 4 that the petitioner herein purposely had used the cheque after closing the account in order to cheat the respondent and hence the complaint does not attracts the provisions of Sec.138 of Negotiable Instrument Act. The respondent herein has not issued the statutory notice to the Company i.e., Sri Periasamy Transport rep.by its Proprietor.

(iv) The learned counsel for the petitioner further submitted that the learned Magistrate has failed to note that the respondent herein had not sent any notice to the aforesaid company at all as it is necessary the cheque in question issued by the Company. The learned Magistrate has failed to take note of the fact that the respondent herein has never issued the statutory

notice to the Periasamy Transport, Salem Main Road, Namakkal as the address given by the respondent herein in the above S.T.C.No.500 of 2010. The learned Magistrate ought not to have taken cognizance of the complaint as the statutory notice had not been issued to the Company. The petitioner states that the learned Magistrate has failed to note that the petitioner herein has specifically stated in his reply that he has been signing the documents in Tamil from 4.9.2008 onwards after publishing it in the Government Gazette. The learned Magistrate has failed to note that the claim of the respondent herein that she had said to have been advanced a huge sum of Rs.4 lakhs without giving any proper security from the petitioner by cash, contrary to the provision of Income Tax Act which prescribe that any payment above Rs.50,000/- had to be paid by way of cheque or demand draft. The learned Magistrate has failed to note that the respondent herein had not stated the witnesses of both the land authorities which are mandatory requirement of the Sec.138 of Negotiable Instruments Act. The action of the respondent in imitating the proceedings is absolutely abuse of process of law and is liable to be quashed.

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3. Further he has submitted that the second accused cannot be prosecuted for alleged offence said to have been committed by the first accused and hence, seeks the quashment.

4. Per contra, the learned counsel for the respondent would submit that the cheque was issued by the second accused in his capacity as proprietor of the first accused and hence, prayed for dismissal.

5. Heard both sides and perused the records.

6. The short points that needs to be addressed in this case is that:-

i) Whether the individual person who runs a business concern/proprietorship is liable for prosecution for the offence of cheque dishonored?

ii) Whether the person is liable for the liability for the proprietorship for the alleged offence under Section 138 of Negotiable Instrument Act is no longer is ingress?

7. In support of this case, the learned counsel for the petitioner has relied on the decision reported in (2007) 5 SCC 103 (Raghu Lakshminarayanan v. Fine Tubes) has held that :-

"A person may carry on business in the name of a business concern, but he being proprietor thereof, would be solely responsible for conduct of its affairs".

8. In view of the settled preposition, I do not find that the sole point raised by the learned counsel for the petitioner stand to reason and this Criminal Original Petition has devoid of merits and accordingly, the same is

9. In the result, this Criminal Original Petition is dismissed.

Consequently, connected Miscellaneous Petition is closed.

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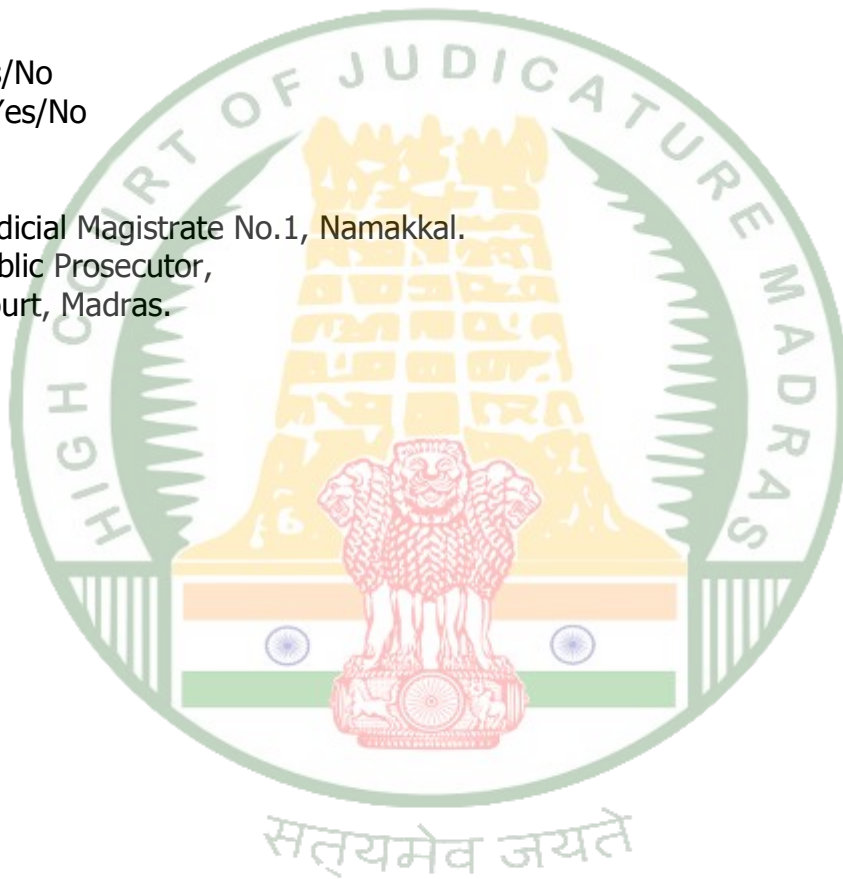
Index:Yes/No

Internet:Yes/No

To

1. The Judicial Magistrate No.1, Namakkal.

2. The Public Prosecutor,
High Court, Madras.



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RMT.TEEKAA RAMAN,J.,
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Order in
CrI.OP No.21825 of 2010 and
M.P.No.1 of 2010

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