

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED .08.2017

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

RESERVED ON :26.07.2017

PRONOUNCED ON : 16.08.2017

**Crl.OP No.485 of 2013
and
M.P.Nos.1 and 2 of 2013**

R.Arjunraj

..

Petitioner

Vs

V.Krishnasamy

..

Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to quash the complaint in C.C.37 of 2012 on the file of the learned Judicial Magistrate No.1, Kanchipuram.

For Petitioner

:Mr.N.Suresh

For Respondent

:V.V.Sriram

सत्यमेव जयते

ORDER

This Criminal Original Petition has been filed under Section 482 Cr.P.C., to quash the complaint in C.C.37 of 2012 on the file of the learned Judicial Magistrate No.1, Kanchipuram.

2. The case of the petitioner herein is that, the respondent/complainant filed a private complaint under Section 200 Cr.P.C

with regard to dishonor of four cheques each for amount Rs.5,00,000/- and after receipt of the summons, he has moved this Court under 482 of Cr.P.C to quash the same.

3. The learned counsel for the petitioner has submitted that the trial Court ought not to have taken cognizance of the complaint as the complaint is ex facie an abuse of process of court.

4. All the cheques filed along with the complaint are on the face of it forged and materially altered documents. In respect of cheque No.047887 date of cheque is altered as 01.03.2011 and month '7' is clearly altered. The amount mentioned in cheque No.047887 is materially altered in respect of cheque No.047888 the date is clearly altered and before number 1 '2' inserted and month 7 is altered as '3' and there is clearly material alteration in respect of cheque No.047889 month and date is altered and as such the cheque is totally materially altered in respect of cheque No.047890 the month and date and altered.

5. He further stated that as per the complaint, the accused as allegedly borrowed Rs.16,00,000/-. However, the total amount under the four cheques comes about Rs.20,00,000/- and the cheques have materially altered as pointed out, in preceding paragraphs and hence, prayed for quashing of the complaint.

6. Per contra, the learned counsel for the respondent/complainant stated that, as per the complaint before the trial Court, the accused has borrowed a sum of Rs.16,00,000/- from the complainant for the purpose of

business and executed a pronote at Kancheepuram on 02.01.2010 in favour of the complainant, agreed to repay the said amount with interest of 18% per annum and further towards the discharge of the amount with accrued interest due under the above said pronote, the accused gave a cheque and on presentation, the same is bounced and hence, the complaint lodged after issuance of the statutory notice as contemplated under the 138 of Negotiable Instruments Act and this Criminal Original Petition is another moved to drag on the proceedings.

7. Heard both sides.

8. The short point that need to be addressed is;

Whether plea of material alteration in the cheque can be canvassed and gone into the quash proceedings.

9. After hearing rival submissions, the case of the respondent/complainant before the trial Court is that the petitioner/accused has borrowed amount for doing business and executed a pro-note, agreeing to repay the said amount at interest of 18% per annum and in discharging towards the legally enforceable debt. The four cheques were issued by the petitioner herein and after observing the statutory procedure, private complaint has been filed and taken cognizance and summons are issued to the accused who is a petitioner herein.

10. The learned counsel for the petitioner drawn the attention of this Court, with regard to the four cheques and contended that the month '7' is altered in cheque No.047887. The amount is also altered and in respect of

cheque No.047888, the month is altered and in the cheque No.047889 date is altered.

11. In short, the accused/revision petitioner has raised a plea that the cheque-in-issue suffers from material alteration in respect of date in few cheques and month in few cheques and amount in few cheques. It is to be stated that though the amount in figures as stated above, but the amount in words are clear. Further, whether the date and month has been altered or not? Whether it is altered by the drawer of the cheque or by the complaint is matter for fact that can be gone into only during trial.

12. Alteration was made by the drawer himself or whether it was made with consent of the drawer, it requires evidence to prove petitioner's contention had no legally enforceable debt is to be paid or not is a question of fact which needs to be proved and determined at trial by way of evidence.

13. In this juncture, the decision in Apex Court in Veera Exports Vs. Kalavathy, (2002) 1 SCC 97 wherein it was held that revalidation of the Negotiable instrument is a material alteration which fact has to be established by the way of evidence at the trial and the same cannot be determined on the mere assertion of the accused. Hence no case for quashing of the summoning order is made out in the present case.

14. In the instant case, it is only the assertion made by the petitioner that he did not make correction the cheque as he owed no legal liability towards petitioner. This fact needs to be ascertained by way of

evidence and the same can be done at the trial and not in a petition under Section 482 Cr.P.C. The veracity of the plea of material alteration cannot be gone into in quash proceedings without trial.

15. In view of the above discussion, the preceding paragraphs and also the law laid down by the Honourable Supreme Court of India in the above referred decision, this Court has no hesitation to come to the conclusion that alleged material alteration in date and amount in the cheque-in-issue cannot be gone into at this stage under 482 of the Cr.P.C and the same can be gone into only by the trial Court by adducing appropriate evidence and expert evidence if need be and accordingly, this Court answers the point in negation against this petitioner and this Criminal Original Petition held to be devoid of merits and accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

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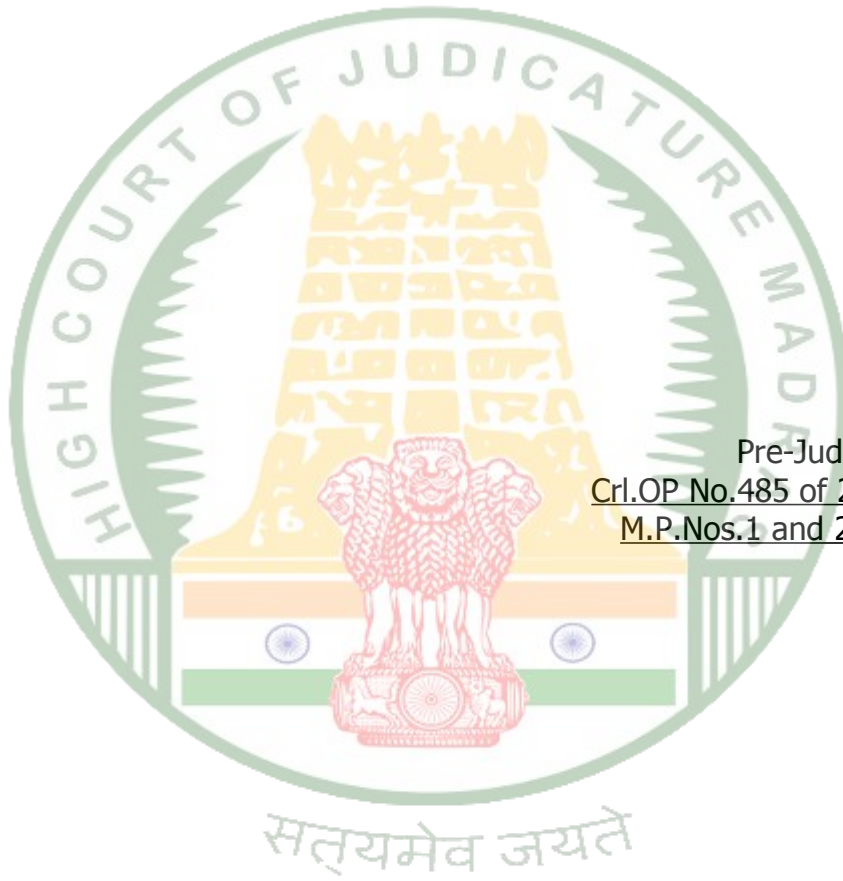
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- 1.The Judicial Magistrate No.1, Kanchipuram.
2. The Public Prosecutor,
High Court, Madras.

RMT.TEEKAA RAMAN,J.,

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Pre-Judgment in
CrI.OP No.485 of 2013 and
M.P.Nos.1 and 2 of 2013

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