

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**Crl.O.P No.24699 of 2010
and
M.P.No.1 of 20100**

K.Ashwinkumar

... Petitioner

vs.

Arun Mehra

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records and quash the complaint in C.C.No.4039 of 2009, on the file of the VIII Metropolitan Magistrate Court, George Town, Madras-1.

For Petitioner : Mr.T.Muruganantham
for M/s.L.Srilekha

For Respondent : No Appearance

JUDGMENT

The petitioner has approached this Court to quash the proceedings in C.C.No.4039 of 2009 on the file of the learned VIII Metropolitan

Magistrate Court, George Town, Chennai, for the offence punishable under Section 138 of Negotiable Instrument Act.

2.The case of the petitioner is that he is a business man and all his transactions pertaining to money are through cheques. For his business purpose, he maintained account with M/s. Standard Chartered Green lays Bank and he obtained cheques from the bank in the year 2002. Subsequently, he has not used to operate his bank account. The further case of the petitioner is that he used to leave blank cheques signed by him for the urgent office use by his staffs. The respondent herein according to the petitioner had acquaintance with his office and took one such cheque leaf in 2002. Subsequently, he presented the said cheque for collection and on its dishonour, he initiated the proceedings in C.C.No.4039 of 2009.

3.It is learnt by the petitioner that his father namely Krishna Kumar had financial transaction with the respondent and he filed a debtor Insolvency Petition in I.P.No.70 of 2009 before this Court to adjudicate his father as an insolvent with other prayers. In order to rid of his father, the petitioner negotiated with the respondent and on behalf of the father of the petitioner, the cheque in question bearing No.917054 dated 02.07.2009 for a sum of Rs.12 lakhs to satisfy all the creditor of his father.

4.It is further represented by the learned counsel for the petitioner that even according to the complaint in C.C.No.4039 of 2009 in page No.3 it is mentioned as follows:

"the accused has approached the complainant personally and having perusal the statement of account of the insolvency petition for a total amount of Rs.13,64,910/- and agreed to discharge the liability towards the liability of the insolvency petition and has requested to waive a part interest and to discharge the liability of Krishna Kumar as a consolidated payment on behalf of all the financiers towards the insolvency petition, the accused has issued a cheque bearing No.917054 dated 02.07.2009 for a sum of Rs.12 lakhs"

So, it is the submission of the learned counsel for the petitioner that there is no legally enforceable debt payable by the petitioner and in the absence of legally enforceable debt, the proceedings under the Negotiable Instrument Act for the offence under Section 138 would be bad in law and no such proceedings can be initiated. Hence, he prayed for quashment of the aforesaid calendar case.

5.I heard Mr.T.Muruganantham for M/s.L.Srilekha, learned counsel

appearing for the petitioner and none appears on behalf of the respondent

and perused all the relevant records including the complaint.

6. It is found in the complaint that the admitted case of the complainant himself is that there is no financial transaction between himself and the petitioner herein. It is seen from the records that the father of the petitioner had financial transaction with several persons and they initiated legal proceedings against the father of the petitioner herein. The appraisal of the provision under Section 138 of the Negotiable Instrument Act is that for the initiation of the proceedings under this Act, one of the important criterions is that there must be a legally enforceable debt to invoke the proceedings under this Act. As the complainant himself admitted that he had financial transaction only with the father of the petitioner, the proceedings initiated on the cheque allegedly issued by the petitioner is impermissible in law. Further, it is not believable that the son accepted the liability of his father that too for several lakhs of rupees and several creditors believed one person that is the petitioner herein to realize the dues payable to them to the respondent herein. If the version of the complainant is true, then it is easy to presume that all the creditors would insist to issue individual cheques to each one to realize their dues. So, there is a considerable force in the arguments advanced by the learned counsel for the petitioner.

7.For the foregoing discussions, this Court is of the considered view that the proceedings in C.C.No.4039 of 2009 is not for any legally enforceable debt and the same is liable to be quashed, accordingly quashed.

8.In the result, the Criminal Original Petition is allowed and the proceeding in C.C.No.4039 of 2009, on the file of the learned VIII Metropolitan Magistrate Court, George Town, Chennai is quashed. Consequently, connected miscellaneous petition is closed.

21.04.2017

Note:Issue order copy on 30.08.2017

Internet : Yes/No

Index : Yes/No

vs

To

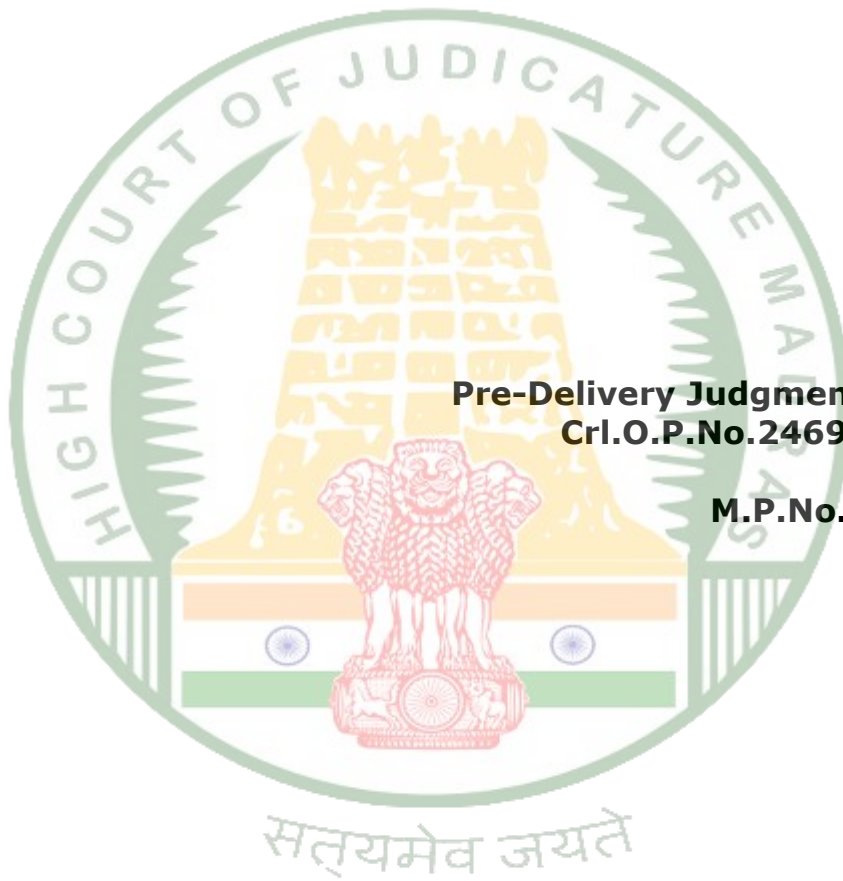
The VIII Metropolitan Magistrate,
George Town, Madras-1.

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M.V.MURALIDARAN,J.

VS



**Pre-Delivery Judgment made in
Crl.O.P.No.24699 of 2010
and
M.P.No.1 of 2010**

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