

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.13390 of 2012

in

Crl.M.P.No.1 of 2012

1. Prithiviraj

2. A.Saravanan

.. Petitioners

Vs.

T.Raju

.. Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C.
praying to call for the records pertaining to the proceedings pending in
CC.No. 133 of 2011 on the file of the learned Judicial Magistrate No.I,
Namakkal and quash the same.

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For Petitioners : Mrs. Premalatha

For Respondent : No appearance

ORDER

This petition is filed praying to call for the records pertaining to the proceedings pending in CC.No. 133 of 2011 on the file of the learned Judicial Magistrate No.I, Namakkal and quash the same.

2. Ms. Premalatha, the learned counsel submitted that the complainant herein had earlier filed a private complaint in STC No. 958 of 2009 before the learned Judicial Magistrate No.I, Namakkal under section 138 of the Negotiable Instruments Act against the first petitioner herein alone. During the course of trial, the bank manager, who was examined as defence witness had stated that the bank account pertaining to the impugned cheque was not that of the first petitioner. Under these circumstances, the complainant had withdrawn the complaint in STC No. 958 of 2009 and has now filed the present complaint against the first petitioner herein and one Saravanan, who is the second petitioner herein.

3. The learned counsel for the petitioners strenuously argued that the present complaint as against the first petitioner herein cannot be maintained in view of the conduct of the complainant in withdrawing the case as against the first petitioner after realising that the offence under section 138 of Negotiable Instrument Act has not been made out as against the first petitioner herein in the earlier complaint. The learned counsel further submitted that when the complainant realised that the offence was not made out against the first petitioner, by no stretch of imagination can he be found guilty in the second complaint which has been made on the same cause of action.

4. Though notice has been served on the respondent and his name is printed in the cause list none appears for him today.

5. I find some force in the submissions of the learned counsel for the petitioners that the present petition cannot be maintained as against the first petitioner herein. As rightly pointed

out by the learned counsel, the first complaint came to be withdrawn only on the basis that the offence under section 138 of the Negotiable Instrument Act cannot be made out as against the first petitioner since the savings account pertaining to the impugned cheque was not that of the first petitioner herein.

6. In the earlier complaint in STC No. 958 of 2009 and in the present impugned complaint, the cause of action is one and the same. It is not the case of the complainant that the second petitioner herein had borrowed the money. The petitioners are now alleged to have committed the offence under sections 120 (B), 468 and 420 IPC. On a perusal of the complaint, there is no averment therein, that could constitute the offence under sections 468 and 420 IPC. As such the offences under these sections are not made out. While that being so, the offence under sections 120(B) IPC cannot also be independently made out. Hence, it would not be appropriate to permit the trial court to proceed as against the petitioners herein and subject them to undergo the ordeal of a criminal trial.

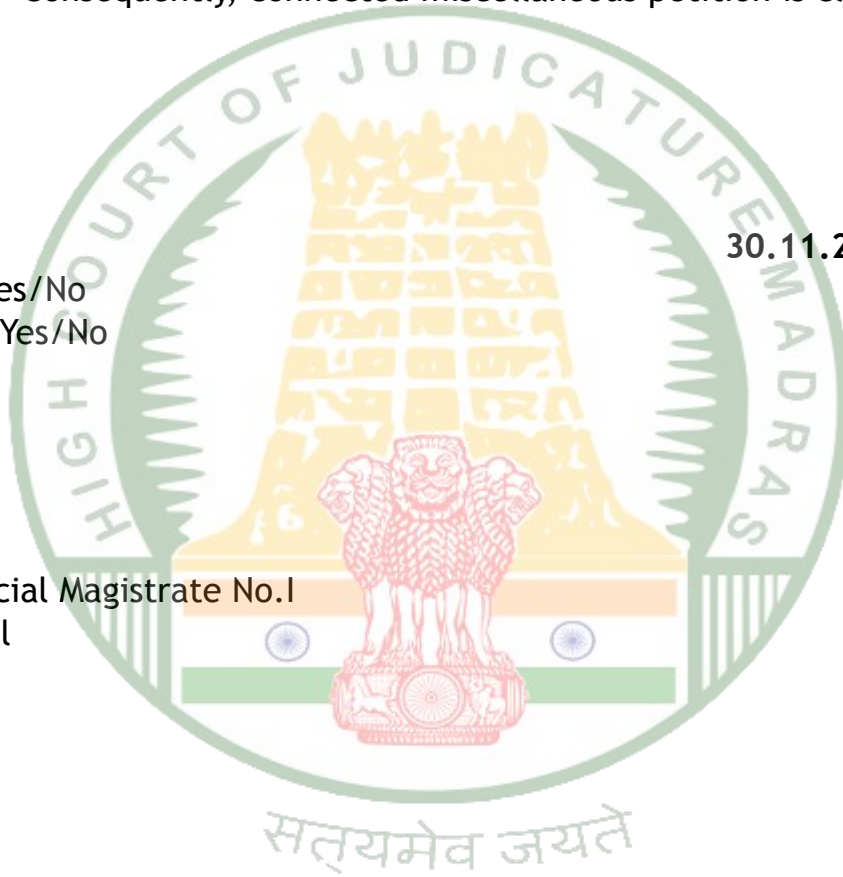
7. In view of the above observations, this Criminal Original Petition stands allowed and the proceedings in CC.No.133 of 2011 on the file of the learned Judicial Magistrate No.I, Namakkal is quashed. Consequently, connected miscellaneous petition is closed.

30.11.2017

Index : Yes/No
Internet:Yes/No
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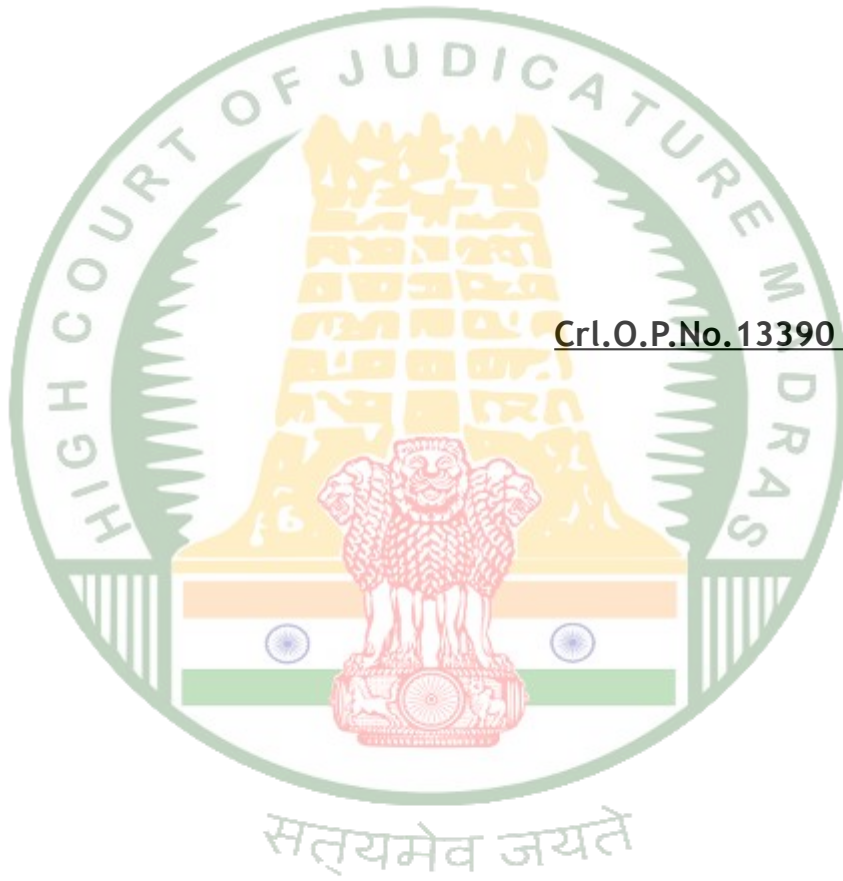
The Judicial Magistrate No.I
Namakkal



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M.S.RAMESH,J.

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