

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.09.2017

Coram

The Hon'ble Mr.Justice **A.D.JAGADISH CHANDIRA**

Criminal Original Petition No.27847 of 2012

M/s. Sri Moogambigai Constructions
India Pvt. Ltd., rep.by its Managing
Director Thiru.K.M.Velumanie,
No.320, Srinivas Complex,
NSR Road, Saibaba Colony,
Coimbatore-641 011. .. Petitioner/Complainant

..VS..

1.M/s.Venus Enterprises,
Rep.by its Managing Partner
Thiru.B.V.Ayyappan,
No.47, IInd Floor,
Sidco Garment Complex,
Guindy, Chennai-32.

2.Thiru.B.V.Ayyappan
Managing Partner,
M/s Venus Enterprises,
No.47, IInd Floor,
Sidco Garment Complex,
Guindy, Chennai-32.

3. Tmt.M.Priya,
Partner, M/s Venus Enterprises
No.47, IInd Floor,
Sidco Garment Complex,
Guindy, Chennai-32.

..Respondents/Accused

Criminal Original Petition filed under Section 482 of Criminal
Procedure Code for a direction to the Judicial Magistrate No.6,

Coimbatore, to take the complaint filed by the petitioner in unnumbered CC No. of 2012, against the respondents, on file and deal with the same in accordance with law.

For Petitioner : Mr.E.Ravichandran

For Respondents : Mr.V.Ashokkumar, for
Mr.Su.Srinivasan

ORDER

This Criminal Original Petition has been filed by the complainant to issue direction to the Judicial Magistrate No.6, Coimbatore, to take the complaint filed by the petitioner in unnumbered CC No. of 2012, against the respondents, which was returned on 03.08.2012, on file and deal with the same in accordance with law.

2. The petitioner is the complainant and he had filed a complaint against the respondents for the offence under Sections 138 and 142 of the Negotiable Instruments Act. In the complaint at paragraphs VII and VIII it had been averred as follows:-

" VII.The Complainant submits that in order to discharge the legal liability all of the accused had issued the cheque for Rs.32,00,000/- to the complainant deliberately with malafide intention to cheat the complainant knowingly fully well that the above said cheque would not be honoured on

presentation for encasement. Hence, the complainant caused a legal notice on 20.02.2012 to the accused as contemplated under Sections 138 and 142 of the Negotiable Instruments Act. The said notice was sent by RPAD. The accused No.1 to 3 is having received the notice on 27.02.2012. The Complainant further submits that after knowing the return of the above said cheque, the accused No.2 called the complainant for settlement talk and on instructions of the accused No.2, the complainant met the accused No.2 at Hotel Vikram, Thirupur, suddenly the police officials attached at Thirupur North Police Station entered the room and forcibly took the Complainant to Thirupur North Police Station and then only the Complainant came to know that the accused No.2 has lodged a false complaint against the Complainant and the same was registered in Cr.No.267/2012 under Section 406, 420, 120(b) and 379 of IPC on 13.02.2012.

VIII. The Complainant further submits that the accused No.2 claiming to be a political big wing and having police officials influence and enjoying the patronage and support of the same he registered the said F.I.R against the Complainant without territorial jurisdiction. Further the police officials attached in Thirupur North Police Station made an eye wash enquiry and forcibly obtained the above said cheque bearing No.714324 issued by the accused No.1 to 3

in respect of the enquiry in Cr.No.267/2012, now the said cheque was in custody of the Inspector of Police, North Police Station, Thirupur, in this regard immediately on 23.02.2012 the Complainant sent a telegram to the Inspector of Police, North Police Station, Thirupur and also sent a Legal Notice dated on 24.02.2012 Inspector of Police, North Police Station, Thirupur. Thereafter the Complainant has filed an application for seeking Anticipatory Bail for the above said case before the Hon'ble High Court of Judicature at Madras in Crl.O.P.No.5015 of 2012 and the same was ordered."

3. On perusal of the records it is seen that the complaint was presented on 3.4.2012 and the Court endorsement shows "Complainant present check and call on 10.4.2012". On subsequent hearings the complaint was just posted for check and call and thereafter on 15.6.2012, it was returned with the direction to file original cheque. On 10.7.2012 the advocate for the complainant had re-presented the complaint with the report of compliance and endorsement stating that "original cheque bearing No.714324 issued by accused No.1 to 3 to the complainant was seized and is in custody of Inspector of Police, Thirupur North Police Station in connection with Crime No.267/2012 and the said fact was explained in para VIII of the complaint. "The complainant have to summon the original cheque at

the time of trial". Thereafter, the matter was posted on various dates for check and call and finally on 3.8.2012, the complaint was returned with an endorsement to file along with the original cheque. Aggrieved by the return of the complaint the present direction petition had been filed by the petitioner to direct the respondent to take the complaint on file.

4. Learned counsel for the petitioner submitted that the order of the Magistrate returning the complaint was not proper and that it had been returned without appreciation of law and facts. Though it had been categorically stated that the original cheque was in the custody of the Inspector of Police, Thirupur North Police Station in connection with Crime No.267/2012, the Magistrate without proper application of facts returned the complaint with the endorsement "to be filed along with the original cheque". He further submitted that the procedure and rules contemplate that at the time of presentation of the complaint the complaint has to be considered by the Magistrate by ordering examination of the complainant or as the case may be his witnesses, and ultimately, if the Magistrate comes to the conclusion that a case has been made out, it is for him to take cognizance of the complaint and if the Magistrate finds that if no case has been made out, it is for him to dismiss the complaint following the procedure contemplated

under law and submitted that in this case the procedure contemplated under Chapter XV Code of Criminal Procedure was not followed and insisted that though it has been categorically stated that the cheque was in the custody of the Inspector of Police, Thirupur North Police Station, the Magistrate without proper appreciation of facts on hand had returned the complaint. The learned Magistrate ought to have examined the complainant or his witnesses on the available material and if needed he ought to have summoned the Inspector of Police, Thirupur North Police Station for production of the original cheque which was in his custody. Whereas the Magistrate had erroneously returned the complaint to be filed along with the cheque, which was admittedly not in his possession. The learned counsel for the petitioner further contended that the Magistrate is competent to take the complaint on file, however, he had merely returned the complaint which is not proper and the proper legal recourse would be that the Magistrate should take the complaint filed by the petitioner on file, examine the complainant and issue process to the respondents and relied on the decision of this Court reported in **2000 (1) CTC 225 (A.Vinayagam vs. Dr.Subash Chandran)** and **(2008) 3 MLJ (Crl) 1334 (Casim Fareed Jaffardeen vs. Mohd. Ansari)**.

5. Notice had been served on the respondent and the respondent

had filed a detailed counter. The crux of the counter was that the dues of the complainant were settled and after having received the amounts, the complainant had filed the complaint which is an abuse of process of law and prayed for dismissal of this petition.

6. Mr.V.Ashokkumar, counsel representing the respondent vehemently contended that the return of the complaint without the original cheque being filed in proper and without the filing of the original cheque which is a crucial document the Magistrate cannot take cognizance of the complaint. At this juncture, this Court need not go into the legal or factual aspect regarding the merit of the of the complaint but what is to be seen is whether the order of the Magistrate in returning the complaint at the threshold is proper or not.

7. Placing reliance on the judgment of the Division Bench of this Court reported in **2000 (1) CTC 225 (A.Vinayagam vs. Dr.Subash Chandran)** the learned Single Judge of this Hon'ble High Court in the later decision reported in **(2008) 3 MLJ (Crl) 1334 (Casim Fareed Jaffardeen vs. Mohd. Ansari)**, has held that:

"..... It is unfortunate that the learned Magistrate has not applied his judicial mind to the allegations in the complaint and has not followed the procedure contemplated under Chapter XV of Cr.P.C. to find out whether a case under Section 406 and 420 I.P.C. has been made out. Even before

undertaking such an exercise, the learned Magistrate has chosen to return the complaint with the aforesaid endorsement which, in the considered view of this Court, is illegal. As laid down by the Division Bench of this Court, the aforesaid endorsement made by the learned Magistrate cannot be considered to be a judicial order. Once the complaint has been filed, it becomes the property of the Court and it cannot be returned under any circumstance. As per the law laid down by the Division Bench, at this stage, all that the Magistrate has to do is to consider the complaint by ordering examination of the complainant/ or as the case may be, his witnesses. If the Magistrate ultimately comes to the conclusion that a case has been made out, it is for him to take cognizance of the complaint. On the other hand, if the learned Magistrate comes to the conclusion that prima facie, no case has been made out, then it is open to him to dismiss the complaint. But, the said procedure has not been followed by the learned Magistrate.

8. Therefore, for the aforesaid reasons, the return of the complaint by the learned Magistrate cannot be sustained and the order is hereby set aside. The criminal original petition is allowed. Liberty is given to the petitioner to re-present the complaint within 2 weeks from the date of receipt of a copy of this order and on such re-presentation, the learned Magistrate shall entertain the complaint and follow the

procedure prescribed under Section 202Cr.P.C. and proceed further in accordance with law. It is made clear that this Court has not expressed any opinion on the merits of the allegations contained in the complaint."

8. Though the case reported in **2000 (1) CTC 225 (A.Vinayagam vs. Dr.Subash Chandran)**, was a case under reference in respect of a conflict between two decisions of this Court in respect of whether once the complaint for an offence under Section 138 of the N.I. Act was presented within the limitation and that presentation was noted by the court and if the complaint is returned back to the complainant by the court and re-presented after the period of limitation, still the complaint would be held to have been presented in time or not?

9. The Division Bench of this Hon'ble Court in paragraphs 11 to 15 and 17, has held as follows:- (paragraphs 11 to 15 and 17)

"11. On this backdrop, it would be better to first find whether a Judicial Magistrate of the first class, accepting the complaint, has the power to return the same. It is an admitted position in this case that the complaints were accepted by the concerned Magistrates, the Courts seals were put on the papers and the judicial court-fee stamps were also cancelled. Both the parties were fair enough to

admit this. Then the court simply returned the papers, without making note thereof in any court records. It is also further an admitted position that on both the complaints the concerned Magistrate himself has made endorsements signifying the " so called defects". Then the Magistrate in both the cases. Justified in simply returning the papers, as they were, to the complainants though after signifying the defects in the complaints.

12. We have scanned the Criminal Rules of Practice, which govern the field. The Criminal Rules of Practice, as would be clear from the preamble, originated in 1931. Number of orders, notifications and administrative instructions have been issued by the Government and the High Court, in exercise of the powers conferred under Art. 227 of the Constitution of India, as also the other enabling powers. There have undoubtedly been amendments from time to time of these rules, but the fact remains that these rules are very much in vogue and govern the field. Rule 28 is covered in chapter III - " Investigation and prosecution by Police". Rule 28 deals with the complaint. The rule is as under:

"28. Complaints of offences whether oral or in writing shall be received on all working days at fixed hours by the Magistrate having jurisdiction to receive them. When the complaint is in writing, the complaint shall present along with the complaint as

many copies on plain paper of the complaint as the number of the accused persons complained against". The rule is clear that the complaint shall be received by the Magistrate and when in writing, the complainant shall present along with the complaint with copies thereof for the accused persons complained against.

13. " Complaint", in Criminal Procedure Code, is defined vide section 2(d). Section 2(d) as under: "complaint" means any allegations made orally or in writing to a Magistrate, with a view to his taking action under this code, that some person, whether known or unknown, has committed an offence, but does not include a Police report.

Explanation - A report made by a Police officer in a case which discloses, after investigation, the commission of a non- cognizable offence shall be deemed to be a complaint; and the Police Officer by whom such report is made shall be deemed to be the complainant;"

Therefore, one thing is certain that when a document styled as a complaint is to be filed by the complainant, it has to be presented to the Magistrate along with adequate number of copies of the complaint. In the same tune is Rule III, which is to be the following effect:

"111. Complaints to be presented in person or by pleader.- All complaints, applications, etc. shall be

presented to the Magistrate by party in person or by his pleader.

The complainant shall present along with the complainant as many copies on plain paper of the complaint as the number of accused persons complained against."

14. The combined reading of section 2(d) of the Code of Criminal Procedure, which defines "complaint" and Rules 28 and 111 of the Criminal rules of practice would suggest that all that the complainant has to do for lodging a complaint is to present a complaint to the Magistrate. That would pre-suppose that the complaint is filed with proper court-fees, which would be paid along with the complaint. Careful scrutiny of the Criminal Rules of Practice as also the Code of Criminal Procedure does not show that anything more is required at this stage to be presented by the complainant or that any documents are also required to be filed along with the complaint. Once a complaint is filed, which answers the description in section 2(d) of the Code of Criminal Procedure along with proper court-fees and copies there would be no question of doing anything further at that stage. In this behalf, chapter XV of the code of Criminal Procedure is extremely telling. It goes without saying, however, that section 200 of the Code of Criminal Procedure commences with the cognizance taken by the

Magistrate. Chapter XV deals with the complaints to the Magistrate and provides for all that the Magistrate has to do after taking the cognizance, that the Magistrate has to do under section 200(a). When the Magistrate takes cognizance upon receiving a complaint under clause (a) of section 200, he acts on the basis of the contents in the complaint with a view to proceed in the matter and has the following courses open:-

- I. He has to examine the complainant and his witnesses, if any.*
- II. after such examination, he may postpone the issuance of process by inquiring into the case by himself or directing an investigation to be made by a police officer.*
- III. If the Magistrate is convicted after the examination of the complainant or as the case may be his witnesses, he may decide to issue the process.*
- IV. He may straight away decide to dismiss the complaint, after such an exercise of examination of the complainant and the witnesses.*

15. Law does not know or provide any other mode of dealing with the complaint, much less returning the complaint. It is not possible for a Magistrate to return the complaint for the so called defects and if the defects are there in the complaint, the complainant has to suffer. There is no warrant

in the Criminal Procedure Code or the Criminal Rules of Practice, empowering the Magistrate to return the complaint just because he thinks that there are any defects. In this behalf, the observation by both the learned Judges that the Magistrate has a power to return the complaint because he has a power to accept is clearly incorrect. In the first place, the Magistrate does not have a "Power" to accept the complaint. That is not the power of the court. That is the "duty" on the part of the court in contradistinction to its "Powers". Again unless there is a specific provision in the Code or the Rules, the Magistrate cannot find out his own procedure by returning the complaint as it is. In fact, when the complainant presents the case to the Magistrate that is not the stage of examining the defects and it is not for the Magistrate to examine the so called defects in the complaint. All that the Magistrate has to do is to consider the same by ordering the examination of complainant and /or as the case may be, his witnesses. It was strenuously suggested that if there are some formal defects like the age is not stated or the name of the father of the accused is not stated, the complainant should get a fair chance to correct the defects. We only observe that it is for the complainant to produce a defectless complaint, if because of such defects, such as non-mentioning of the age and names of father, etc., the identity of the

accused person becomes suspicious or is not established properly then, the complainant must suffer for his defective complaint, but, under no circumstances, could the Magistrate return the complaint particularly after the court-seal had been put on that complaint and the court-fee stamps have been cancelled then, as rightly found by Janarthanam, J., the complaint becomes the court property.

17. In this behalf, we may also consider one more fact and that is Rules 9, 10 and 11 under Chapter IV, which is for "Institution of Proceedings", of the Madras High Court Appellate Side Rules, 1963, Rule 9 reads as:

"9 (1) Every proceeding which is not instituted in conformity with the provisions of the Code, or of these rules or of any special enactment or of the rules applicable to it, shall be returned to the amendment and representation. Unless the Registrar prescribes a shorter period, the proceeding shall be represented after compliance with all the defects pointed out, within ten days after the notification of the defect, on the board of the Court.

(2) Every proceeding re-presented either without rectifying all the defects pointed out or after the expiry of the time allowed under the preceding sub-rule should be accompanied by a petition for

extension of time supported by an affidavit where necessary.

(3) The period prescribed for re-presentation shall be computed afresh for each return pointing out fresh defects.

(4) Proceedings re-presented after a period of three months after the expiry of time allowed will be posted before Court marked "not re-presented in time for orders".

Rule 10 provides that the time fixed by the rules in doing any act can be extended only on a duly stamped application, while Rule 11 suggests that where no such time limit is fixed for doing any act, the Registrar, in his discretion, may fix the time within which the act should be done and may grant such further time as he deems proper in the circumstances of the proceeding. Thus, under these rules, the Registry of this High Court could return back the papers presented to it in a defective manner. Thus there is a specific power to return back the papers to the party and that too, after fixing a specific time limit. The existence of such rules would only suggest that the papers could not be simply returned by the Magistrates without there being any rules in this behalf. We have shown the rules only to highlight the absence of such rules in the matter of return of the complaint by the Magistrates. Absence of such rules applicable to the

filing the High Court, would be all the more telling in the circumstances and would suggest that the action on the part of the Magistrates in returning the complaint papers was completely baseless."

10. Heard the counsels and perused the records.

11. It is seen that the order under challenge in this petition is only against the return of the complaint without following the procedures contemplated under Cr.P.C. Taking into consideration the arguments made by both the counsels and the judgment referred to supra, this Court feels that the order of return of complaint passed by the learned Magistrate is not proper and has to be set aside and the Magistrate be directed to take the complaint on file and follow the procedures contemplated under Chapter XV of the Code of Criminal Procedure by examining the complainant and his witnesses if any. In respect of the counter filed by the respondent, as already stated he is entitled to raise all these defences at the appropriate proceedings in the event of being summoned by the Court.

12. In view of the above, the order of return of the complaint filed by the petitioner in unnumbered CC No. of 2012, dated 3.8.2012

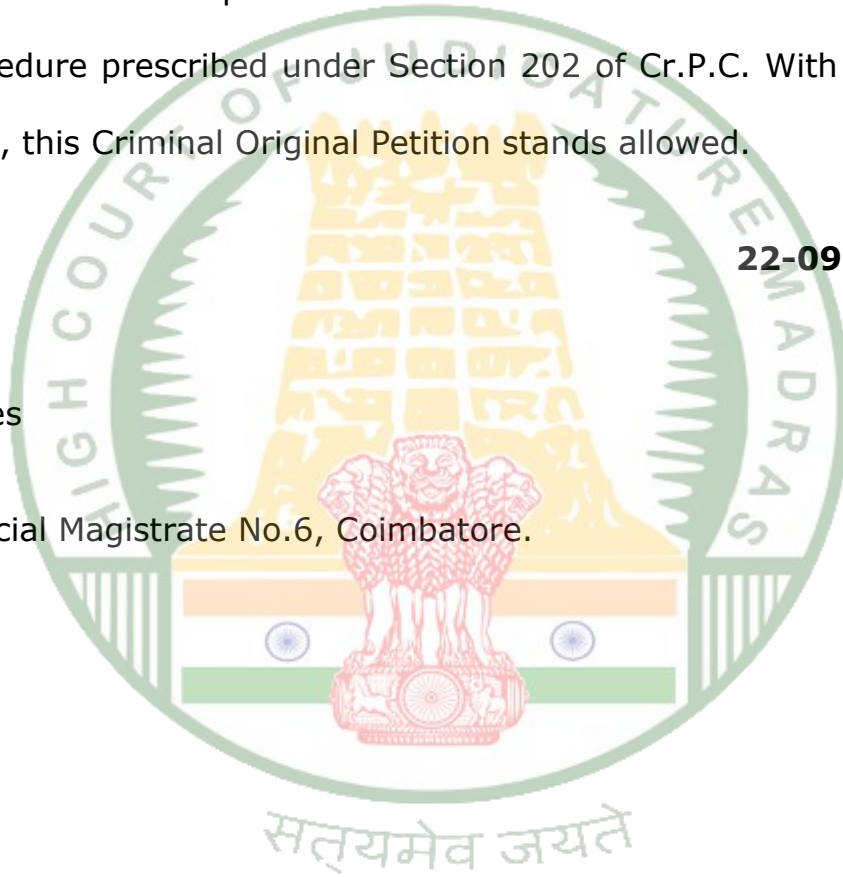
of the Judicial Magistrate No.6, Coimbatore, is set aside and the petitioner is directed to re-present the complaint within a period of two weeks from the date of receipt of the copy of the order from this court and on such re-presentation, the learned Magistrate shall entertain the complaint on file and proceed in accordance with law in adherence to the procedure prescribed under Section 202 of Cr.P.C. With the above direction, this Criminal Original Petition stands allowed.

22-09-2017

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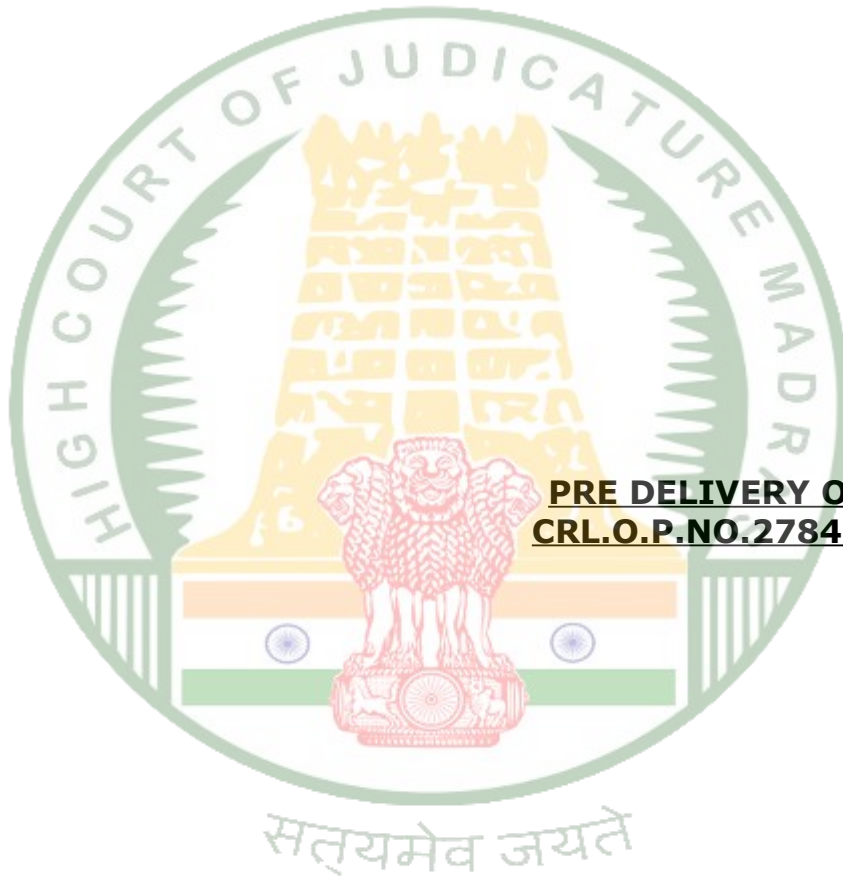
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The Judicial Magistrate No.6, Coimbatore.



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A.D.JAGADISH CHANDIRA,J.,

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PRE DELIVERY ORDER IN
CRL.O.P.NO.27847 of 2012

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