

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2017

(Orders reserved on 02.08.2017)

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CrI.O.P.No.18834 of 2013

and

M.P.Nos.1 and 2 of 2013

Rohit Jayakar Nair

... Petitioner/Accused

.. Vs ..

V.Shanmugam

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in C.C.No.2647 of 2011 pending on the file of the II Fast Track Court, Egmore, Chennai - 600 008 and quash the same.

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For Petitioner : M/s.M.Vidya

For Respondent : Mr.C.Kanagaraj

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ORDER

The accused in C.C.No.2647 of 2011 on the file of the II Fast Track Court, Egmore, Chennai, is the petitioner herein.

2. This Criminal Original Petition is filed under Section 482 of Cr.P.C., seeking to quash the proceedings in C.C.No.2647 of 2011 pending on the file of the Fast Track Court No.II, Egmore, Chennai.

3. The respondent herein has filed a complaint under Section 138 of the Negotiable Instruments Act against the petitioner herein for the dishonour of cheque to the tune of Rs.30,00,000/- before the learned XIV Metropolitan Magistrate, Egmore, Chennai, and the same is now transferred to Fast Track Court No.II, Egmore, Chennai.

4. Learned counsel appearing for the petitioner/accused submitted that the petitioner was shocked and surprised when the petitioner's father was intimated by the local police two years later during September, 2012 that there was a bailable warrant in the name

of the petitioner issued by the II Fast Track Court, Chennai, in a 138 proceedings, C.C.No.2647 of 2011 initiated by the respondent against the petitioner in respect of the aforesaid dishonoured cheque. It is further submitted that nearly after two years from the date when the petitioner received a notice from the respondent, there was a warrant against the petitioner in a proceedings in which the petitioner never received any summon or notice from the Court.

5. Learned counsel also submitted that the complaint was filed by the respondent along with an application to condone the delay of 20 days in filing the above said Calender Case. The said application was dated 15.10.2010. Surprisingly, the said application was not even numbered and although notice was ordered to the petitioner on 14.02.2011 returnable by 11.03.2011, without notice being served on the petitioner, the application appears to have been allowed on 01.07.2011. Thereafter, the above said Calender Case appears to have been numbered and even in the said Calender Case, summons has not been served on the petitioner and based on an alleged "postal cover service" filed by the respondent showing endorsement "left", aailable warrant was issued against the petitioner on 16.09.2011 and hence,

based upon the above factual background, the learned counsel for the petitioner made the following submissions.

The application to condone the delay in filing the complaint was allowed on 01.07.2011 without serving notice for the hearing date on the petitioner, even though notice was ordered to the petitioner by the Magistrate's Court. The respondent had dispatched summons privately on 24.08.2011 at 14.34 p.m. for hearing on 26.08.2011 and based on the returned cover, the Magistrate Court had treated the summons as served on the petitioner and issued a bailable warrant against the petitioner. Therefore, summons has not been served on the petitioner in the complaint.

6. Learned counsel appearing for the respondent/complainant submitted that initially, the complaint was filed before the learned XIV Metropolitan Magistrate, Egmore, Chennai, with a delay of 20 days in filing the complaint and after observing the formalities, the delay has been condoned in unnumbered C.M.P. on 12.05.2011. Thereafter, the private complaint was filed under Section 200 of Cr.P.C. for the offence punishable under Section 138 of the Negotiable Instruments

Act in respect of the cheque issued by the petitioner/accused herein on 06.07.2010 for the amount of Rs.30,00,000/- and notice and summons sent to the petitioner/accused were returned as left resulted in issuance of bailable warrant and hence, the quashment of the proceedings does not arise at this stage.

7. After hearing both sides and after perusing the records, it seems that there is a civil dispute between both the parties and allegations and counter allegations regarding earlier transaction between the parties have been averred in the petition.

8. Be that as it may, the complaint under Section 200 of Cr.P.C. for the alleged offence under Section 138 of the Negotiable Instruments Act was filed in respect of the cheque bearing No.266799, dated 06.07.2010 for amount of Rs.30,00,000/- drawn on Deutsche Bank, M.G. Road, Bangalore, and the said cheque was said to have been deposited by the respondent/complainant with his Bankers, Canara Bank, Overseas Branch, Chennai, and the same was said to have been returned for the reason "insufficient funds". After issuance of statutory notice, the complainant has preferred a complaint for the

offence punishable under Section 138 of the Negotiable Instruments Act. However, as there was a delay of 20 days in preferring the complaint, the respondent/complainant filed a miscellaneous petition under Section 142 (B) of the Negotiable Instruments Act. At this juncture, it is to be stated that from the adjudication order, I find that there is no number was given for the said miscellaneous petition. From the copy issued by the Fast Track Court No.II, Egmore, Chennai, on 14.02.2011, the petition seems to have been re-presented with condonation of delay in re-presentation and the said petition was ordered. Thereafter, in the condonation petition to the complaint, notice was directed to be issued for the hearing on 11.03.2011. At the time of admission of this criminal original petition, considering the allegations levelled by the learned counsel for the petitioner that no notice has been served on the petitioner/accused for the hearing date 11.03.2011, entire records have been called for. Perused the original records submitted by the trial Court.

9. On a perusal of the original records, it is seen that though advocate notice to the accused in the condonation of delay petition for the hearing was signed on 05.03.2011, registered post was posted

in the post office on 10.03.2011 at 11.04 a.m. for the hearing date of 11.03.2011 at 10.30 a.m. before the Court. The trial Court, on 11.03.2011, adjourned the matter to 12.05.2011 and on 12.05.2011, based upon the affidavit of service filed on behalf of the respondent herein for the above said notice, proof of service filed was recorded and posted as if the respondent was called absent and allowed the petition to condone the delay. It remains to be stated that when a letter is posted at the noon time of 10.03.2011 for the hearing date on the very next day i.e., on 11.03.2011 at 10.30 a.m., it could not have been served. In the acknowledgment filed before the trial Court, it appears the seal of 28.03.2011. Therefore, the acknowledgment was returned to the counsel on 28.03.2011 and hence, this Court is of the considered view that there is no sufficient notice for the hearing date either for 11.03.2011 or for the subsequent hearing date on 12.05.2011. It appears from the records as reflected in adjudication order that on 12.05.2011 based upon the above said notice which relates to the hearing date of 11.03.2011, as observed earlier posted only on 10.03.2011. The trial Court seems to have carried away with the affidavit of service in a mechanical manner and allowed the petition without verifying the notice of hearing contained in the

notice filed before the Court and hence, this Court is of the considered view that the contention of the learned counsel for the petitioner that he has not been given sufficient opportunity to contest the condonation of delay petition especially, having regard to the quantum of the amount involved in the cheque and the chequered history of civil case between the parties, since the condonation of delay petition was ordered without reference to the hearing date as filed in the affidavit of service, this Court finds that the trial Court has committed an error in condoning the petition without hearing the petitioner/accused herein, since he was not even served for the hearing date on 11.03.2011 or for the subsequent hearing date of 11.03.2011. In this view of the matter, the condonation of delay petition ordered by the trial Court is not in accordance with the principles of natural justice as the same is allowed without notice to the petitioner/accused.

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10. The second limb of the petitioner's counsel argument is that without proper service in the calender case, bailable warrant has been issued. Attention of this Court has been drawn to the summons for the hearing date 26.08.2011 which is said to have been despatched on

24.08.2011. As this Court has already observed that the order passed in the condonation of delay petition is not in accordance with the principles of natural justice and mandatory provisions of service of notice, the second contention is not taken into consideration and other issues between the parties are not gone into and accordingly, though the prayer is for quashment of C.C.No.2647 of 2011 in view of the discussion in the preceding paragraphs to the effect that there is no proper service of summons in respect of petition to condone the delay of 20 days in taking the complaint on record, this Court is of the considered view that C.C.No.2647 of 2011 has to be denumbered from the Registry and the matter has to be reverted back to the stage of the condonation delay petition and in the interest of justice in exercise of powers of this Court conferred under Section 482 of Cr.P.C., the Fast Track Court No.II, Egmore, Chennai, is hereby directed to de number the C.C.No.2647 of 2011 in setting aside the cognizance taken in numbering the case and matter shall stand reverted to the stage of petition to condone the delay and as observed earlier, there was no number has been assigned, an opportunity has to be given to the petitioner, who is an accused, to file counter in the said condonation of delay petition and thereafter to dispose of the

application in accordance with law.

11. In view of the findings in the preceding paragraphs, this Court has not gone into the other points raised by the respective parties and they are at liberty to agitate the same by adducing the evidence, since the allegations and the counter allegations made are mixed question of fact and that has to be gone into by adducing evidence during the time of trial.

12. In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.2647 of 2011 pending on the file of the Fast Track Court No.II, Egmore, Chennai, is quashed. The Fast Track Court No.II, Egmore, Chennai, is hereby directed to de number the above C.C.No.2647 of 2011 and also directed to dispose the condone delay petition within a period of eight weeks from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petitions are closed.

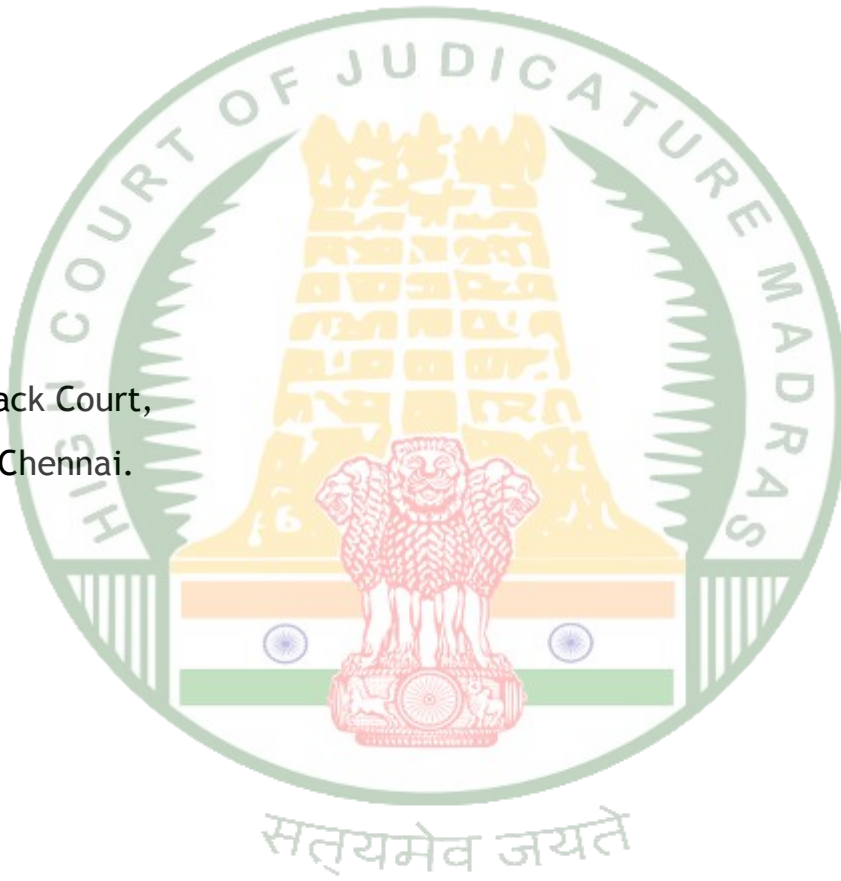
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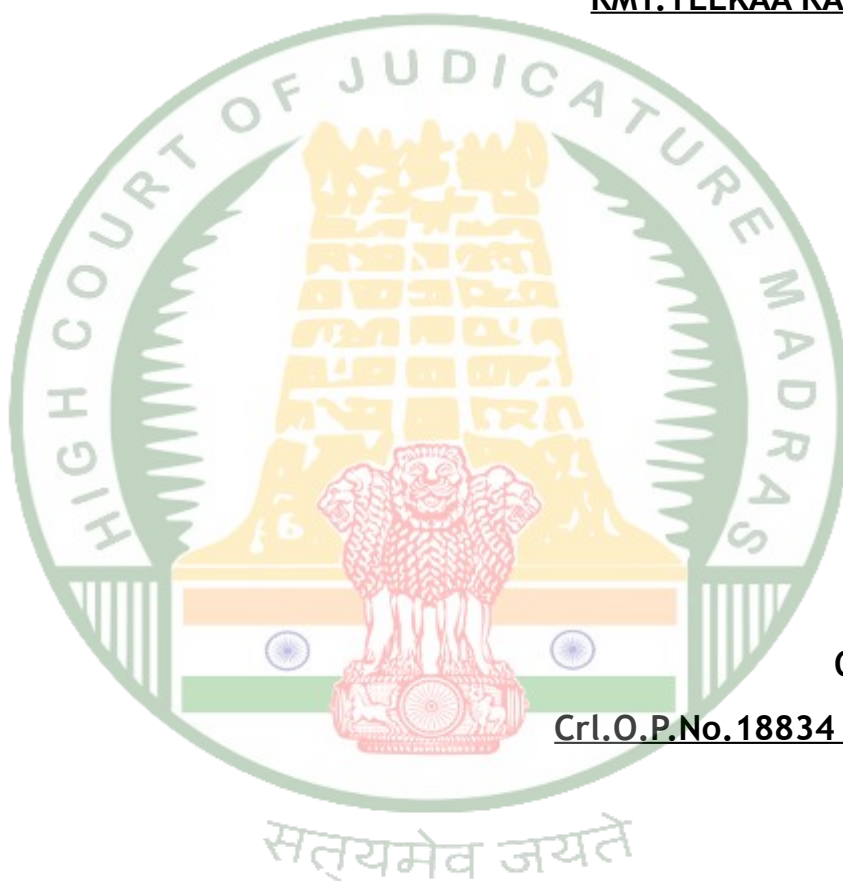
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Egmore, Chennai.



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RMT.TEEKAA RAMAN, J.

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Order in

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