



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

Crl.O.P(MD)Nos.18924 and 7727 of 2014

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In Crl.O.P.No.18924 of 2014:

S.Bharathi

... Petitioner/Accused

Vs.

V.Michelraj

... Respondent/Complainant

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C to call for the records pertaining to the impugned order in Crl.M.P.No.348 of 2014 in S.T.C.No.197 of 2012 dated 24.09.2014 on the file of the learned Judicial Magistrate NO.II, Madurai (Fast Track Courts), Madurai and to set aside the same in the nature and circumstances of the case.

For Petitioner

: Mr.S.Dhana Aravindha Balaji

For Respondent

: Mr.T.K.Gopalan

In Crl.O.P.No.7727 of 2014:

V.Ravi

... Petitioner/Accused No.3

Vs.

S.Barathi

... Respondent/Complainant

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C to quash the private complaint in ***C.C.No. 3** of 2014 on the file of the ***Fast Track Court No.II, Madurai.**

For Petitioner

: Mr.S.Gokul Raj

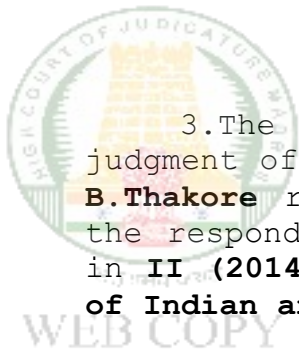
For Respondent

: Mr.V.A.Dhana Aravindha Balaji

C O M M O N O R D E R

The petition in Crl.O.P.No.18924 of 2014 has been filed by the accused in S.T.C.No.197 of 2012 being aggrieved against the order passed in Cr.M.P.No.348 of 2014 by which a request made to eschew the earlier affidavit was rejected. The petition in Crl.O.P.No.7727 of 2014 has been filed by the petitioner who is arrayed as the third accused in ***C.C.No.3** of 2014 pending on the file of the ***Fast Track Court No.II, Madurai.**

2. In sofaras the petition in Crl.O.P.No.18924 of 2014 is concerned, the erstwhile counsel for the petitioner preferred the chief examination of the petitioner by proof affidavit and also marked some documents. After changing the Advocate, another application has been filed to eschew the affidavit filed basing reliance of Section 145 of Negotiable Instruments Act. The Court below after considering the decision of this Court and the decision of the Hon'ble Supreme Court, was pleased to reject the same. Hence, this petition.



3. The learned counsel for the petitioner has made reliance on the judgment of the Apex Court in **Mandvi Co-operative bank Limited Vs. Nimesh B.Thakore** reported in **AIR 2010 SC 1402** whereas the learned counsel for the respondent made reliance on the judgment of the Apex Court reported in **II (2014) BC 654 (SC)** in **Indian Bank Association and Others Vs. Union of Indian and Others**.

4. On perusal of the aforesaid two judgments, it is very clear that in the subsequent judgment, by taking note of the earlier one, the Hon'ble Apex Court has held in clear terms that under Section 145 of the Negotiable Instruments Act, the court can permit the affidavit filed by the accused concerned. The only condition that has to be followed is that such witness will have to be subjected to cross examination as to facts stated in affidavit. Therefore, in the light of the said judgments of the Apex Court, this Court does not find any error in the order passed by the court below. Accordingly, the petition in CrI.O.P.No.18924 of 2014 is dismissed. Considering the fact that the case is pending from 2012 onwards, the learned Judicial Magistrate No.II, Madurai, is directed to dispose of S.T.C.No.197 of 2012 within a period of six months from the date of receipt of copy of this order.

5. Insofar as CrI.O.P.No.7727 of 2014 is concerned, the same is filed by third accused in C.C.No.24 of 2014. Though it is true that this Court has quashed the proceedings as against the second accused, the petitioner is standing on a different footing and there is sufficient averment against him.

6. It is submitted by the learned counsel for the respondent that in pursuant to the earlier complaint, cheque has been recovered by the police from the petitioner/third accused, which is said to have been signed by him. Considering the same and in the light of the submissions made, this Court is not inclined to quash the proceedings as against the petitioner. Hence, this petition is dismissed. However, ***Fast Track Court No.II**, Madurai, is directed to dispose of ***C.C.No.3** of 2014 within a period of six months from the date of receipt of copy of this order.

7. It is made clear that observation made by this Court is only *prima facie* and the court below will have to decide the cases on merits without influenced by this order. Consequently, connected M.P.(MD) No.1 of 2014 in both CrI.O.P.s are closed. Considering the submissions made, personal appearance of the petitioners in both petitions before the Court below is dispensed with until and unless the same is required.

Ses

Sd/-

Assistant Registrar[RTI]

/True copy/

***Amended as per order dated:26.7.16
made in CrI.MP.(MD).No.5149/2016 in
CrI.OP.(MD).No.7727/2014.**

Sub Assistant Registrar



To

To be substituted for the order already despatched on 10.07.2015

1. *The Judge, Fast Track Court No.II, Madurai

WEB COPY

2.The Judicial Magistrate No.II, Madurai

3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

+2 cc to Mr.Dhana Law Associates, Advocate SR.Nos.34745 & 34746.

+1 cc to Mr.T.K.Gopalan, Advocate SR.No.35072

+1 cc to Mr.S.Gokulraj, Advocate Sr.No.39557

Cr1.O.P. (MD) Nos.18924 and 7727 of 2014
Dated:30.06.2015

2P/7C

RPB 10.07.2015

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