



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 16.03.2017
CORAM

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

WEB COPY

CRL.O.P. (MD) No.2903 of 2017
and
CrI.M.P. (MD) Nos.2212 and 2213 of 2017

Ananthakumar : Petitioner

Vs.

Parthasarathy,
S/o.Gunasekaran,
Assistant Manager,
Sri Gokulam Chits & Finance
Company (P) Limited,
Situated at No.80, R.S.P.Complex,
Theradi Street,
Pattukottai and also a power Agent of
A.M.Gopalan,
Managing Director,
Sri Gokulam Chits & Finance
Company (P) Limited.

: Respondent

Prayer:Criminal Original Petition is filed under Section 482 of Cr.P.C., praying to call for the records pertaining to S.T.C.No.32 of 2017 on the file of the learned Judicial Magistrate, Fast Track Court, Pattukottai and quash the same.

For Petitioner : Mr.C.Bharathi

O R D E R

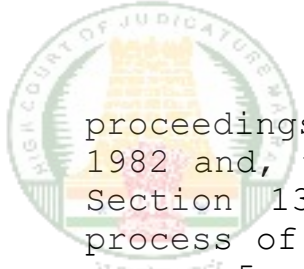
For the sake of convenience, the parties should be referred to as complainant and accused.

2. It is the case of the complainant that they are doing a chit business and the accused had joined a chit and had taken Rs.16,80,150/-, for which, the accused had given a cheque dated 03.11.2016, which, when presented by the complainant, was returned "unpaid" on the ground of "funds insufficient". The complainant issued a statutory notice dated 16.11.2016 to the accused and since the accused did not make payment, the complainant has lodged a prosecution in S.T.C.No.32 of 2017 before the learned Judicial Magistrate, Fast Track Court, Pattukottai under Section 138 of the Negotiable Instruments Act against the accused herein, challenging which, the accused is before this Court.

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3. Heard Mr.C.Bharathi, learned counsel for the accused.

4. The learned counsel for the accused submitted that the complainant Chit Fund Company has initiated arbitration



proceedings in A.R.C.No.637 of 2016 in terms of Chit Funds Act, 1982 and, therefore, the present prosecution for the offence under Section 138 of the Negotiable Instruments Act is an abuse of process of law.

5. This Court gave its anxious consideration to the submissions of Mr.C.Bharathi, learned counsel for the accused.

6. It is trite law that the proceedings for recovery of money through civil forum will not bar a prosecution under Section 138 of the Negotiable Instruments Act. The prosecution is for the dishonour of the cheque, but, whereas, the arbitration proceedings under the Chit Funds Act is for determination of the amount payable to the Chit Company. One is a civil proceeding and the other is a criminal prosecution and both can go exist. Therefore, the same cannot be quashed.

7. In the result, this Criminal Original Petition is dismissed with liberty to the accused to raise all the points before the Trial Court. The accused is directed to appear before the Trial Court, within a period of two weeks from the date of receipt of a copy of this order and furnish a bond under Section 88 Cr.P.C. with two sureties for Rs.10,000/- (Rupees Ten Thousand only) each to the satisfaction of the learned Judicial Magistrate, Fast Track Court, Pattukottai. Thereafter, the accused is permitted to engage a counsel on special vakalat. The accused shall appear before the Trial Court for receiving the complaint and other papers under Section 207 Cr.P.C., at the time of framing charges, for questioning under Section 313 Cr.P.C. and on the day of judgment. On all other dates, if the accused files an application under Section 317 Cr.P.C., undertaking that he will not dispute his identity and that his counsel will cross-examine the prosecution witnesses in his absence without adopting dilatory tactics, the Trial Court may liberally consider and entertain the same. If the accused adopts any dilatory tactics, it is open to the Trial Court to insist upon his presence. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To
The Judicial Magistrate, Fast Track Court, Pattukottai.

+One cc to Mr.D.R.Murugesan, Advocate, SR.No.15445

SML

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RL/3C/2P/SKN/28.3.2017

Order made in

CRL.O.P.(MD) No.2903 of 2017
16.03.2017