



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.03.2017

CORAM:

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

CrI.O.P. (MD) No.3551 of 2017

and

CrI.M.P. (MD) Nos.2663 and 2664 of 2017

Manipandi

: Petitioner

-Vs-

Senthurpandian

: Respondent

PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code praying to call for the records pertaining to C.C.No.29 of 2016 on the file of the learned Judicial Magistrate, Rajapalayam and quash the same.

For Petitioner : Mr.J.Lawrance

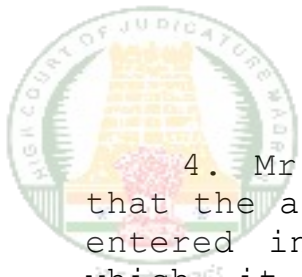
O R D E R

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

2. It is the case of the *defacto* complainant that the accused borrowed Rs.6,50,000/- on 20.01.2015 and in discharge of the said liability, he had issued a cheque dated 25.05.2015 for Rs.3,10,000/- and also a cheque dated 27.04.2015 for Rs.3,00,000/-. According to the complainant, he presented the cheque dated 25.05.2015 on 13.08.2015 and it was dishonoured. Strangely, in the statutory notice and in the complaint, he has stated that he once again re-presented the cheque on 13.08.2015, which, on the face of it, sounds impossible. However, as regards the cheque dated 27.04.2015, for Rs.3,00,000/-, it is the case of the complainant that he presented it on 20.07.2015. But the cheque was dishonoured on 21.07.2015. Thereafter, he has issued a statutory notice dated 20.08.2015 in respect of both the cheques and on the failure of the accused to repay the amount, has filed a prosecution in C.C.No.29 of 2016, before the learned Judicial Magistrate, Rajapalayam, against the accused for an offence under Section 138 of the Negotiable Instruments Act, challenging which, the accused is before this Court.

<https://hcservices.ecourts.gov.in/hcservices/>

3. Heard Mr.J.Lawrance, learned counsel for the accused.



4. Mr.J.Lawrance, learned counsel for the accused submitted that the accused is a building contractor and that the accused had entered into a construction agreement with the complainant, in which, it is the *defacto* complainant who had to give money to the accused and when the accused started demanding the money, the complainant has initiated a false prosecution. That apart, Mr.J.Lawrance, learned counsel submitted that there is patent contradiction in the version of the complainant with regard to the presentation and representation of the cheque dated 25.05.2015 for Rs.3,10,000/-. As regards the cheque dated 27.04.2015 for Rs.3,00,000/-, Mr.J.Lawrance, learned counsel submitted that it was dishonoured on 20.07.2015 and it was intimated to the complainant on 21.07.2015, but the statutory notice was issued on 20.08.2015, which is 30 days beyond the time prescribed by Section 138 of the Negotiable Instruments Act.

5. This Court gave its anxious consideration to the submission made by the learned counsel for the accused.

6. This Court is in entire agreement with Mr.J.Lawrance, learned counsel for the accused, as regards the discrepancy relating to the cheque for Rs.3,10,000/-, dated 25.05.2015. Strangely, the complainant both in his statutory notice dated 20.08.2015 and in the complaint, has asserted that the cheque dated 25.05.2015 was presented twice and the date given therein is 13.08.2015. Thus, in the opinion of this Court, the prosecution of the accused without adequate grounds, vis-a-vis., the cheque dated 25.05.2015, for Rs.3,10,000/- stands vitiated.

7. As regards the contention of Mr.J.Lawrance that the cheque was dishonoured on 20.07.2015 and it was intimated to the complainant on 21.07.2015, but the complainant had issued the statutory notice only on 20.08.2015, which is 30 days beyond the time prescribed under Section 138 of the Negotiable Instruments Act, this Court is of the view that under Section 9 of the General Clauses Act, the day on which the complainant knew about the dishonour of cheque, viz., 21.07.2015 should be excluded. Therefore, applying Section 9, issuance of notice on 20.08.2015 cannot be said to be barred by limitation. However, this point is also left open to the accused to establish during trial factually that the notice was sent after the period of limitation. Thus, since there are *prima facie* materials with regard to the dishonour of the cheque dated 27.04.2015 for Rs.3,00,000/-, the entire prosecution cannot be quashed. Under such circumstances, this Criminal Original Petition is closed with liberty to the accused to work out his remedies in the manner known to law.

<https://hcservices.courts.gov.in/hcservices> At this juncture, learned counsel appearing for the petitioner/accused submits that the presence of the petitioner/accused before the Trial Court may be dispensed with.



9. Accepting the submission, this Court directs the petitioner/accused to surrender before the Trial Court, within a period of two weeks from the date of receipt of a copy of this order and on his surrender, he shall be released on bail under Section 436 of the Code of Criminal Procedure on the same day, on he executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) without sureties to the satisfaction of the learned Judicial Magistrate, Rajapalayam and, thereafter, he shall engage a counsel on special vakalat and 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 he 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 he 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 (AS)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate,
Rajapalayam.

+1 cc to Mr.J.LAWRANCE, Advocate SR.No. 18595

SML

TE/SV/SAR-II : 06/04/2017 : 3P/3C

Order made in
CRL.O.P.(MD) No.3551 of 2017 and
Crl.M.P.(MD)Nos.2663 and 2664 of 2017
27.03.2017