



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15 .02.2017

CORAM:

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

Crl.O.P. (MD)No.2825 of 2016

and

Crl.M.P(MD)Nos.10587, 1376 and 1377 of 2016

WEB COPY

C.K.Ganeshan

:Petitioner/Respondent

Vs.

P.Suresh

: Respondent/Petitioner

Prayer: This petition is filed under Section 482 of Cr.P.C., to call for the records pertaining to the STC No.1044 of 2015 on the file of the learned Judicial Magistrate No.1, Sivagangai, quash the same.

For Petitioner

: Mr.V.Baskaran

For Respondent

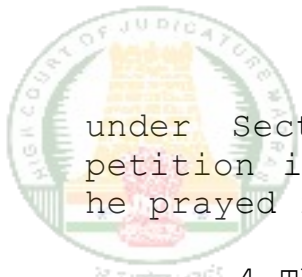
: Mr.A.V.Arun

O R D E R

This petition is filed to call for the records pertaining to STC No.1044 of 2015 on the file of the learned Judicial Magistrate No.1, Sivagangai and quash the same.

2.The learned counsel appearing for the petitioner would submit that Oath statement given by the complainant on 25.09.2015 before the Judicial Magistrate No.1, Sivagangai, is totally inconsistent with the facts narrated in the complaint filed in STC No.1044 of 2015 and that the complainant has not furnished any statement of accounts of the petitioner or the loan agreement to show that the petitioner was liable to pay the cheque amount in question on the date mentioned in the cheque in question and that the case registered against the petitioner under Section 138 of Negotiable Instruments Act is an abuse of process of law. Hence, he prayed that the case taken on file in STC No.1044 of 2015 is liable to be quashed.

3.Per contra, the learned counsel appearing for the respondent would submit that the trial court, after perusal of the entire records, has come to the conclusion that prima facie materials available against the petitioner to proceed the case



under Section 138 of the Negotiable Instrument Act and this petition is filed only to drag on the trial proceedings. Hence, he prayed for the dismissal of the petition.

4. This court has carefully heard the submission made on either side and perused the entire materials available on record.

5. It is seen from the records that the petitioner has borrowed a sum of Rs.16,50,000/- from the respondent and subsequently, to settle the dues, issued a post dated cheque for a sum of Rs.16,50,000/- on 03.04.2015. When the cheque was presented for collection, on 31.07.2015 the cheque was returned as "Insufficient funds". Thereafter, the respondent issued a legal notice to the petitioner on 28.08.2015, but it was returned as 'refused by the petitioner'. Hence, the complaint was preferred before the competent court on 18.09.2015 within 10 days from the date of return of the notice. Since, prima facie materials available against the petitioner, the real truth will come into light, only after conducting the trial of the case in STC No.1044 of 2015. In view of the above circumstances, this court is of the considered view that the quash petition filed by the petitioner is a premature one and hence, the relief sought for by the petitioner cannot be granted.

6. In the result, this petition is **dismissed** with a direction to the Judicial Magistrate No.1, Sivagangai, to post the case on day today basis and dispose of the case, on merits and in accordance with law, within a period of three weeks from the date of receipt of a copy of this order and report the same to the Registry. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To,
The Judicial Magistrate No.1,
Sivagangai.

+1 cc to M/S.V.BASKARAN, Advocate SR.No.8821
+1 cc to MR.A.V.ARUN, Advocate SR.No.9111

Cr1.O.P. (MD) No.2825 of 2016

15.02.2017

SMA/MR/23.02.2017:2P/4C