

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2018

CORAM

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.30051 of 2013

and

MP.No.1 of 2013

V.Senthilvel

Proprietor M/s.R.C.Traders,

No.8, G.K. Industrial Estate Alapakkam,

Chennai- 600 116.

... Petitioner/Accused

Vs.

M/s.SRN Consulting

Rep. By Power of Attorney Agent

K.Venkatadri

Having office at

kalashetra Road,

Thiruvannamiyur,

Chennai- 600 041.

...Respondent/Complainant

PRAYER: This Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.4544/2013 on the file of XVIII Metropolitan Magistrate, Saidapet at Chennai and quash the same.

For Petitioner : M/s.M.Selvam

For Respondent : No Appearance

सत्यमेव जयते
O R D E R

This petition has been filed by the accused to quash the complaint filed by the respondent/complainant in C.C.No.4544 of 2013 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai.

2.The respondent herein has filed a private complaint against the petitioner herein alleging that the petitioner herein had obtained a loan of Rs.18,00,000/- (Rupees Eighteen Lakhs Only) from the respondent on 31.07.2010 and agreed to repay the same with interest in equal monthly installments. He further stated that in the complaint that the petitioner herein had issued two cheques, with a view to partial discharge of the

aforesaid loan each for a sum of Rs.40,000/- dated 20.12.2012 and 24.12.2012 respectively and he further stated that he has presented the said cheques in the Bank for encashment on 24.12.2012 and the said cheques were returned with a Bank memo dated 26.12.2012 as "Exceeds Arrangements". Thereafter, he has issued a statutory notice calling upon the petitioner herein to pay the amount which is due under the said cheques. The petitioner herein had received the said notice on 18.02.2013, but thereafter within 15 days the petitioner herein has not paid the amount and hence the respondent filed a private complaint stating that the petitioner has to be punished under Section 138 of the Negotiable Instruments Act.

3. This Court has ordered notice on 21.11.2013 to the respondent. Subsequently, on 07.08.2018 fresh notice was ordered and private notice was also permitted. In pursuance of the said order, the learned counsel for the petitioner has sent a private notice and also filed a proof of service. In the said proof of service he has enclosed the returned postal cover, in the said postal cover it is mentioned that the letter has been returned as "insufficient address". Hence, fresh notice was ordered with a direction that the notice may be sent to the counsel, who appeared before the Trial Court for the respondent requesting him to instruct his client to appear before this Court on 11.10.2018.

4. Accordingly, the learned counsel for the petitioner has sent a notice to the counsel, who appeared before the Trial Court for the respondent and to that effect, proof of service also filed. It is seen from the said proof of service, the counsel, who is appearing for the respondent before the Trial Court has received the said notice on 16.10.2018. But, even, thereafter, the respondent has not appeared before this Court either in person or through counsel. Hence, after hearing the arguments of the learned counsel for the petitioner and on perusal of the records, order is being passed by this Court.

5. The learned counsel for the petitioner has submitted that in the complaint, the respondent herein has stated that he has presented the cheques in the Bank on 24.12.2012 for encashment and the said cheques were returned with a Bank memo dated 26.12.2012 "Exceeds Arrangements" and thereafter, he has issued a statutory notice on 24.01.2013 and in the office copy of the notice also, it is stated that the said notice has been sent on 24.01.2013 but in the postal receipt which was enclosed with the said notice shows that the said notice was despatched, only on 18.02.2013 and it shows that the said notice was sent only on 18.02.2013.

6. The learned counsel for the petitioner relying upon a decision in "Kamlesh kumar Vs. State of Bihar and another, [2014

(1) CTC 329]" contented that since the statutory notice has not been sent within 30 days from the date of return of the cheques, the complaint is not maintainable.

7. In Para-14 of the aforesaid decision, the Hon'ble Supreme Court has observed as follows:-

"14. It is, thus, apparent that he received the information about the dishonour of the Cheque on 10.11.2008 itself. However, he did not send the legal Notice within 30 days there from. We thus, find that the Complaint filed by him was not maintainable as it was filed without satisfying all the three conditions laid down in Section 138 of the N.I. Act as explained in Para 12 of the Judgement in the case of MSR Leathers, extracted above."

8. Though, the respondent has stated in his complaint that the cheques were returned with Bank Memo dated 26.12.2012 and with regard to the same, he has issued a statutory notice on 24.01.2013 and the office copy of the said notice also contains the date as 24.01.2013, the postal receipt which was enclosed with the typed set of papers would show that the said notice was sent by registered post only on 09.02.2013. So it is clear that the said notice was not sent on 24.01.2013. On the contrary, it was sent on 9.02.2013 i.e., after expiry of 30 days from the date of return of cheques.

9. In view of the afore said decision of the Hon'ble Supreme Court in Kamlesh kumar Vs. State of Bihar and another, (supra) the complaint is not maintainable.

10. In the result, This Criminal Original Petition is allowed the complaint filed against the petitioner in C.C.No.4544 of 2013 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai is quashed. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

stm/mm

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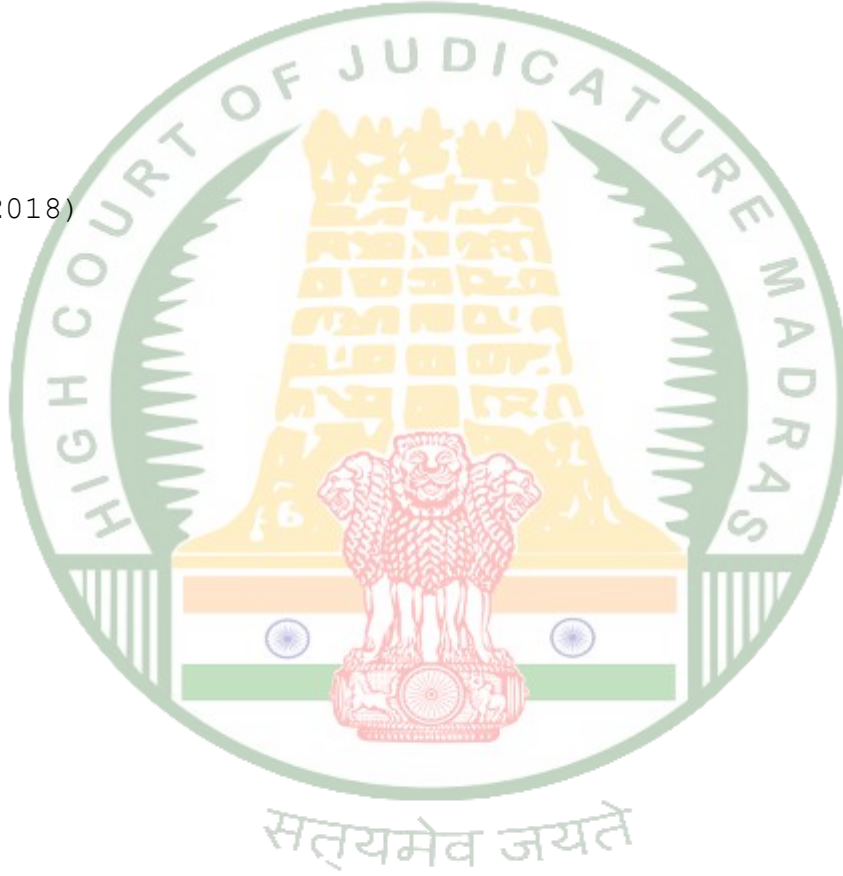
1.The XVIII Metropolitan Magistrate,
Saidapet, Chennai.

2.The Public Prosecutor,
High Court, Madras.

+3 CCs to Mr.M.Selvam, Advocate sr 75106, 74953, 74954.

CrI.O.P.No.30051 of 2013

AD(CO)
SP(03/12/2018)



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