

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2018

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.7637 of 2017 & Crl.M.P. Nos.5523 & 5524 of 2017

N.D. Mani

Petitioner

vs.

Rajesh Associates
represented by its Proprietor N. Rajesh
S/o H. Nimichand
No.75 Nainiappa Naicken Street
Park Town
Chennai 600 003

Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records relating to C.C. No.1890 of 2016 on the file of and quash the same as illegal and unsustainable in law.

For petitioner

Mr. C.P. Sivamohan
for Mr. D. Kumaralingam

For respondent

Mr. R. Prakasam

ORDER

This Criminal Original Petition has been preferred seeking to call for the records relating to C.C. No.1890 of 2016 on the file of the IV Fast Track Court at George Town, Chennai and quash the same as illegal and unsustainable in law.

2 For the sake of convenience, the petitioner and the respondent are referred to as the accused and complainant respectively.

3 It is the case of the complainant that the accused is into exports of incense sticks and that the accused had borrowed Rs.10 lakhs from him to meet his business requirements and towards the discharge of the said liability, the accused had given two impugned cheques, one dated 25.05.2016 for Rs.5 lakhs and another dated 26.05.2016 for Rs.5 lakhs; that when the complainant presented the said cheques, they were returned on 27.05.2016 on the ground "funds insufficient"; hence, the complainant issued a legal notice dated 10.06.2016 demanding payment of the said sum; the accused received the notice on 13.06.2016 and neither replied to the legal notice nor paid the amount of the cheques; therefore, the complainant initiated a prosecution in C.C. No.1890 of 2016 and the same is now pending on the file of the IV Fast Track Court, George Town, Chennai, challenging which, the accused is before this Court.

4 Heard Mr. C.P. Sivamohan, learned counsel representing Mr.D.Kumaralingam, learned counsel for the accused and Mr.R.Prakasam, learned counsel for the complainant.

5 Mr. Sivamohan, learned counsel for the accused made the following submissions:

- that the complainant had issued various communications earlier, wherein, he has taken a stand that the accused had borrowed a sum of Rs.10 lakhs;
- that in the statutory notice dated 10.06.2016 issued under Section 138 of the Negotiable Instruments Act, 1881, the complainant has stated that the accused had borrowed a sum of Rs.12 lakhs and had issued two cheques for Rs.5 lakhs each and one cheque for Rs.2 lakhs;
- however, in the complaint in C.C. No.1890 of 2016, the complainant has stated that the accused has borrowed a sum of Rs.10 lakhs and has referred to only 2 cheques for Rs.5 lakhs each and there is no reference to the cheque for Rs.2 lakhs;

6 In fine, Mr. Sivamohan, learned counsel for the accused submitted that the statutory demand notice dated 10.06.2016 stands vitiated in the light of the law laid down by the Supreme Court in **Suman Sethi vs. Ajay K. Churiwal and another [(2000) 2 SCC 380]** and therefore, the prosecution founded upon such an invalid statutory notice cannot be maintained.

7 Per contra, the learned counsel for the complainant refuted the contentions put forth by the learned counsel for the accused.

8 This Court gave its anxious consideration to the rival submissions.

9 As regards the first contention of Mr. Sivamohan with regard to the earlier communications that were sent by the complainant to the accused, the same cannot be looked into in a quash petition as they are disputed questions of facts, which can be established only during trial. However, in the statutory notice dated 10.06.2016, the complainant has stated as follows:

"That you borrowed from my client at Chennai a sum of Rs.12 lakhs and in consideration thereof, you issued your cheques as follows:

1. Rs.5,00,000/- Cheque No.751209 dated 25.05.2016
2. Rs.5,00,000/- Cheque No.808811 dated 26.05.2016
3. Rs.2,00,000/- Cheque No.107457 dated 26.05.2016

in favour of my client.

Under instructions from my client and on his behalf, I hereby call upon you to pay my client the sum of Rs.12 lakhs within 15 days from the date of receipt of this notice failing which my client will be constrained to file a petition against you in the Metropolitan Magistrate Court under Section 138 of the Negotiable Instruments Act for your prosecution holding you liable for all costs and consequences incidental thereto."

10 Thus, in the statutory notice, the complainant has given the description of three cheques that are said to have been issued by the accused. However, in the complaint in C.C. No.1890 of 2016, the complainant has rested his case only on the two cheques for Rs.5 lakhs each and has not initiated any prosecution for the cheque for Rs.2 lakhs. In the body of the complaint, the complainant has stated that the accused has borrowed Rs.10 lakhs and that he had issued two cheques for Rs.5 lakhs each.

11 In **Suman Sethi** (supra), relied upon by the learned counsel for the accused, the complainant had issued a notice demanding an amount higher than the amount of the cheque. The Supreme Court, while dealing with the said issue, has laid down in paragraph nos.7 and 8 as under:

"7. There is no ambiguity or doubt in the language of Section 138. Reading the entire section as a whole and applying common sense, from the words, as stated above, it is clear that the legislature intended that in a notice under clause (b) to the proviso, the demand has to be made for the cheque amount. According to Dr Dhavan, the notice of demand should not contain anything more or less than what is due under the cheque.

8. It is a well-settled principle of law that the notice has to be read as a whole. In the notice, demand has to be made for the "said amount" i.e. the cheque amount. If no such demand is made the notice no doubt would fall short of its legal requirement. Where in addition to the "said amount" there is also a claim by way of interest, cost etc. whether the notice is bad would depend on the language of the notice. If in a notice while giving the break-up of the claim the cheque amount, interest, damages etc. are separately specified, other such claims for interest, cost etc. would be superfluous and these additional claims would be severable and will not invalidate the notice. If, however, in the notice an omnibus demand is made without specifying what was due under the dishonoured cheque, the notice might well fail to meet the legal requirement and may be regarded as bad."

12 The objective of issuing a notice under Section 138 of the Negotiable Instruments Act is to draw the attention of the accused that a specified cheque issued by him has been dishonoured and that 15 days time is given to him to make good the amount towards the dishonoured cheque so as to avoid prosecution.

13 In this case, in the statutory notice dated 10.06.2016, the complainant has clearly given the description of the two cheques for Rs.5 lakhs each. Of course, the complainant has added another cheque for Rs.2 lakhs and has totally demanded Rs.12 lakhs from the accused. However, in the complaint and in the sworn statement, the complainant has rested his case only on the two cheques for Rs.5 lakhs each and has not prosecuted the accused for the dishonour of the third cheque for Rs.2 lakhs.

14 In the facts and circumstances of this case, one cannot say that the statutory notice dated 10.06.2016 is bereft of particulars for the accused to understand the nature of the allegations levelled against him. Hence, the statutory notice at hand cannot be said to be not in consonance with the requirements of the statute.

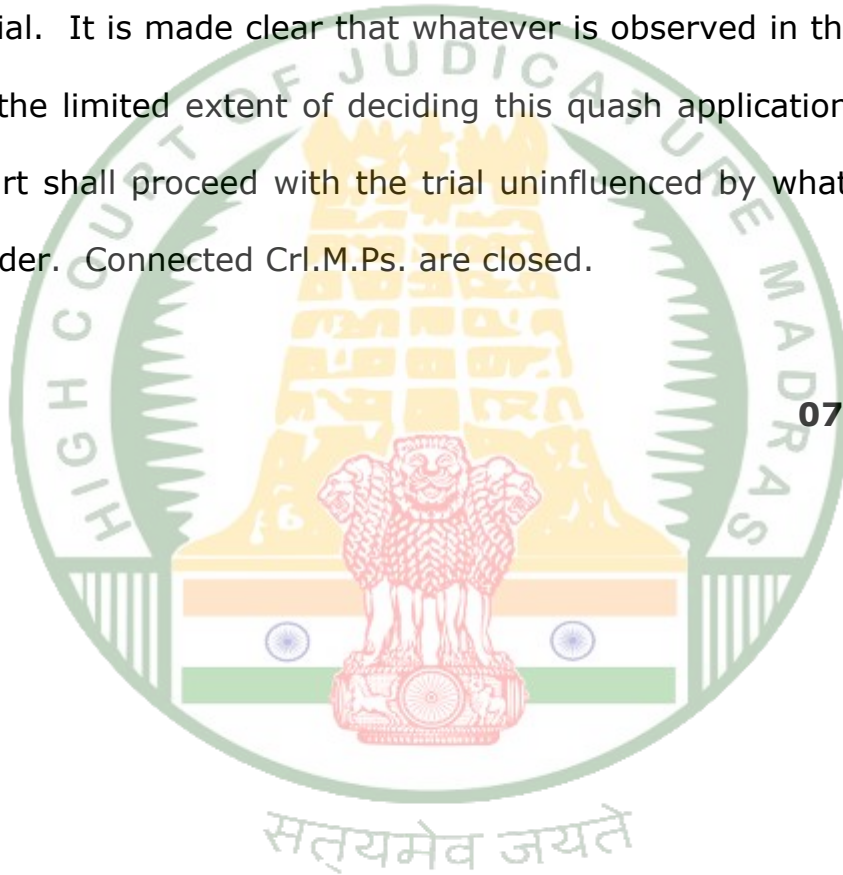
15 The other contention that on the same day of borrowing, no prudent person would issue a cheque towards the borrowed amount, is a question which cannot be determined in the quash application, since cross-examination of the complainant is necessary for him to accept the circumstances which may or may not merit acceptance by the Trial Court. In such perspective of the matter, this

Court does not find any merit in this quash application warranting interference.

Resultantly, this Criminal Original Petition is dismissed with liberty to the petitioner to raise all the points before the Trial Court during trial. It is made clear that whatever is observed in this order is only for the limited extent of deciding this quash application and the Trial Court shall proceed with the trial uninfluenced by what is stated in this order. Connected Crl.M.Ps. are closed.

07.06.2018

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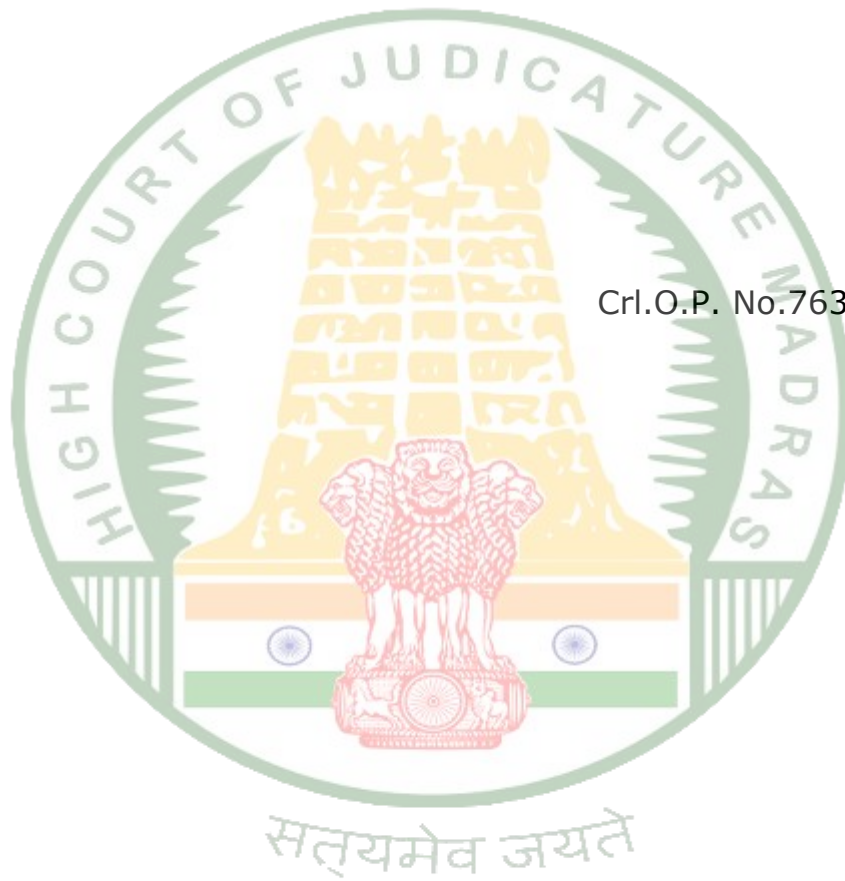
- 1 The IV Fast Track Judge
George Town
Chennai
- 2 The Public Prosecutor
High Court of Madras
Chennai 600 104



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P.N. PRAKASH, J.

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