

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.08.2018

DELIVERED ON: 09.08.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.No.30050 of 2013

and

M.P.Nos.1 of 2013 and 1 of 2014

T.Kalaimani ... Petitioner

Vs.

P.T.Sambandan ... Respondent

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in C.C.No.201 of 2013 on the file of the Judicial Magistrate, Fast Track Court, Vellore and quash the same as illegal and unsustainable.

For Petitioner : Mr.R.Sankarasubbu

For Respondent : Mr.S.Suresh

ORDER

The petitioner Ms.T.Kalaimani is the accused in C.C.No.201 of 2013 on the file of the Judicial Magistrate, Fast Track Court, Vellore.

2. The respondent/complainant Mr.P.T.Sambandan had filed a private complaint under Section 200 of the Code of Criminal Procedure before the Judicial Magistrate, Fast Track Court, Vellore in C.C.No.201 of 2013 against the petitioner/accused for an alleged offence punishable under Section 138 of the Negotiable Instruments Act.

3. The case of the respondent/complainant in his private complaint in C.C.No.201 of 2013 on the file of the Judicial Magistrate, Fast Track Court, Vellore in nutshell is as follows. The petitioner/accused borrowed a sum of Rs.2,00,000/- from the respondent/complainant on 20.09.2010 by way of cheque, drawn on Indian Bank, High Court Branch, Chennai and it was

encashed by her on the same day i.e. on 20.09.2010. The petitioner, after much persuasion, handed over a cheque dated 03.06.2013 for Rs.2,00,000/-, drawn on Indian Bank, High Court Branch, Chennai to the respondent, even though it was agreed between the parties that an interest at the rate of 12% p.m. would be paid on the principal. When the cheque was presented on 07.08.2013 for collection through the respondent/complainant's bankers viz., Indian Bank, Sathuvachari Branch, Vellore, the same was returned for the reason "insufficient funds". Thereafter, the respondent/complainant issued a statutory notice dated 22.08.2013 to the petitioner/accused and since no amount was forthcoming, he filed a private complaint under Section 138 of the Negotiable Instruments Act in C.C.No.201 of 2013 on the file of the Judicial Magistrate, Fast Track Court, Vellore against the present petitioner.

4. On the side of the petitioner/accused, it is alleged that the petitioner/accused issued a notice dated 07.08.2013 to her bank viz., Indian bank, High Court, Branch, Chennai to stop the payment and that a police complaint was also lodged with the Inspector of Police, Esplanade Police Station, which was registered as C.S.R.No.52 of 2013. According to the petitioner, the entire proceedings in C.C.No.201 of 2013 on the file of the Judicial Magistrate, Fast Track Court, Vellore is liable to be quashed, since it has been filed with malafide intentions.

5. The arguments of Mr.R.Sankarasubbu, learned counsel appearing for the petitioner/accused are mainly on two points.

i] Since the entire transaction took place in Chennai, a private complaint in C.C.No.201 of 2013 before the Judicial Magistrate, Fast Track Court, Vellore has without any jurisdiction.

ii] The respondent/complainant also filed a civil suit against the petitioner/accused for recovery of money and therefore, a filing of the criminal complaint under Section 138 of the Negotiable Instruments Act is with malafide intention.

6. Per contra, Mr.S.Suresh, learned counsel appearing for the respondent/complainant would contend that the respondent is aged 89 years and that the petitioner and the respondent are practicing advocates and since the respondent/complainant settled down in Vellore, he got his account with Indian Bank, High Court Branch, Chennai transferred to his native place at Sathuvachari, Vellore and presented the cheque on 07.08.2013, after giving intimation to the petitioner/accused through Short Messaging Service (SMS). His further contention is that the petitioner/accused under the guise of the present criminal original petition, which is pending from the year 2013, had

stalled the entire proceedings in C.C.No.201 of 2013 before the Judicial Magistrate, Fast Track Court,Vellore. His specific contention is that, the Judicial Magistrate, Fast Track Court, Vellore has jurisdiction to entertain the complaint and the civil suit filed by the respondent/complainant against the petitioner for recovery of money is not a bar for filing a compliant under Section 138 of the Negotiable Instruments Act.

7. At the out set, it may be observed that all the allegations mentioned in the present petition are disputed question of facts, which cannot be decided in the instant petition filed under Section 482 of the Code of Criminal Procedure. Further more, since the respondent/complainant has presented the cheque given by the petitioner/accused through his bankers viz. Indian Bank, Sathuvacharry Branch, Vellore District, the Judicial Magistrate, Fast Track Court, Vellore has jurisdiction to entertain the complaint. Further more, this court cannot agree with the arguments advanced by Mr.R.Sankarasubbu, learned counsel appearing for the petitioner that since the original transaction took place only in Chennai, the complaint should have been filed only in Chennai and not in Vellore. Apart from this, the filing of civil suit for recovery of money is totally different from the penal provisions enunciated under Section 138 of Negotiable Instruments Act and therefore, no malafide intention can be attributed to the respondent/complainant in this regard. In the facts and circumstances of the present case, I do not find any reason to quash the proceedings in C.C.No.201 of 2013 on the file of the Judicial Magistrate, Fast Track Court, Chennai and hence the petition is liable to be dismissed.

8. In the result, the criminal original petition is dismissed. Since the proceedings in C.C.No.201 of 2013 on the file of the Judicial Magistrate, Fast Track Court, Vellore is pending for more than 5 years, the Judicial Magistrate, Fast Track Court, Vellore is directed to dispose of the case within a period of three months, from the date of receipt of a copy of this order.

9. With the above observations, the criminal original petition is dismissed and the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mst

To

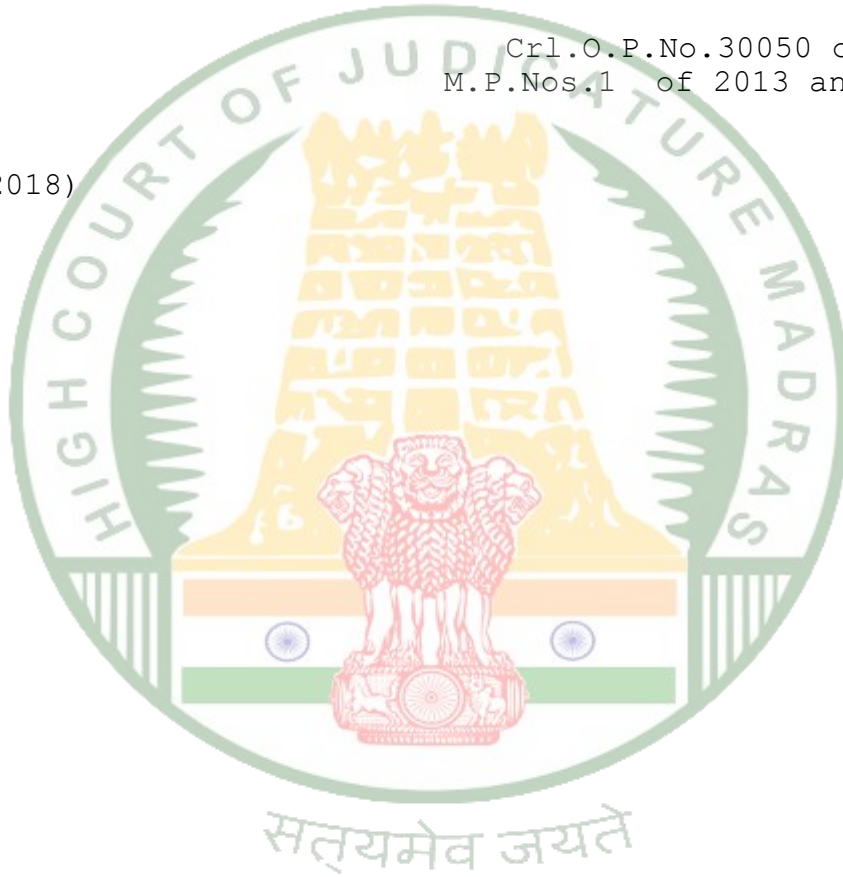
1. The Judicial Magistrate,
Fast Track Court,
Vellore District.

2. The Public Prosecutor,
Madras High Court.

+1cc to Mr.R.SANKARASUBBU, Advocate, S.R.No. 54803

Crl.O.P.No.30050 of 2013 and
M.P.Nos.1 of 2013 and 1 of 2014

SVN(CO)
TR(23/08/2018)



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