

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2018

CORAM :

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.21523 of 2018 and
Crl.M.P.Nos.11769 & 11770 of 2018

S.Malathi Dhobhel

... Petitioner

Vs

1. K.Ramapillai

2. SAF Engineers,
No.1406, Venkatasamy Naidu Lane,
Trichy Road, Coimbatore.

3. Frank

... Respondents

Criminal Original Petition filed under Section 482 Cr.P.C.,
praying to call for the records and quash the proceedings before
the Judicial Magistrate-II, Karaikal in S.T.R. No. 1147 of 2017.

For Petitioner : Mr.T.K.S.Gandhi

O R D E R

This petition has been filed to call for the records
relating to S.T.R. No.1147 of 2017, on the file of the Judicial
Magistrate Court No.II, Karaikal, and quash the proceedings
therein.

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

3. It is the case of the complainant that A2 and A3 are
partners of A1 firm and had jointly borrowed Rs.10,00,000/- from
the complainant at his residence on 11.08.2015; towards the said
debt, a cheque dated 14.08.2017 signed by A2 and A3 on behalf

of the A1 firm was issued to the complainant; the complainant presented the cheque and the same was dishonoured; the complainant issued a statutory notice dated 18.09.2017 to A2 and A3 and thereafter, filed the complaint in S.T.R. No.1147 of 2017 before the Judicial Magistrate Court No.II, Karaikal, under Sections 138 and 142 of the Negotiable Instruments Act, 1881, challenging which, A2/petitioner is before this Court.

4. Heard the learned counsel for A2/petitioner, who submitted that, A2/petitioner was not a partner of A1 firm, as on 14.08.2017, which could be seen from the Retirement Deed of Partnership, dated 13.10.2015.

5. In the opinion of this Court, the fact remains that A2/petitioner has signed the cheque and this Court cannot rely upon the Retirement Deed dated 13.10.2015, for exonerating her. Disputed questions of fact cannot be gone into, in a quash application.

6. Hence, this petition is dismissed with liberty to A2/petitioner to raise all the points before the trial Court, after the accused are questioned under Section 251 Cr.P.C. during trial.

7. However, the learned counsel for A2/petitioner submitted that for A2/petitioner being a lady, her presence before the trial Court may be dispensed with. Accepting the submission, A2/petitioner is directed to appear before the trial Court within two weeks from the date of receipt of a copy of this order and file an application under Section 436 Cr.P.C. On the petitioner/A2 executing a bond for Rs.5,000/- with one surety, the learned Magistrate shall release her on bail, on the same day. The petitioner/A2 shall be present for receiving the complaint, for answering the charge, at the time of questioning under Sections 251 and 313 Cr.P.C. and at the time of passing judgment. For the other hearings, the petitioner/A2 shall file a petition before the trial Court under Section 317 Cr.P.C., giving an undertaking that she will not dispute her identity and that the counsel named by her in the affidavit will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Supreme Court in Vinod Kumar vs. State of Punjab [2015(1) MLJ (Cr1) 288]. On such application being filed, the trial Court may liberally consider the same. If the petitioner/A2 adopts any dilatory tactics, it is open to the trial Court to insist upon her presence and remand her to custody as laid down by the Supreme Court in State of Uttar

Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. If the petitioner/A2 absconds, the trial Court shall direct registration of an FIR against her under Section 229-A IPC. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

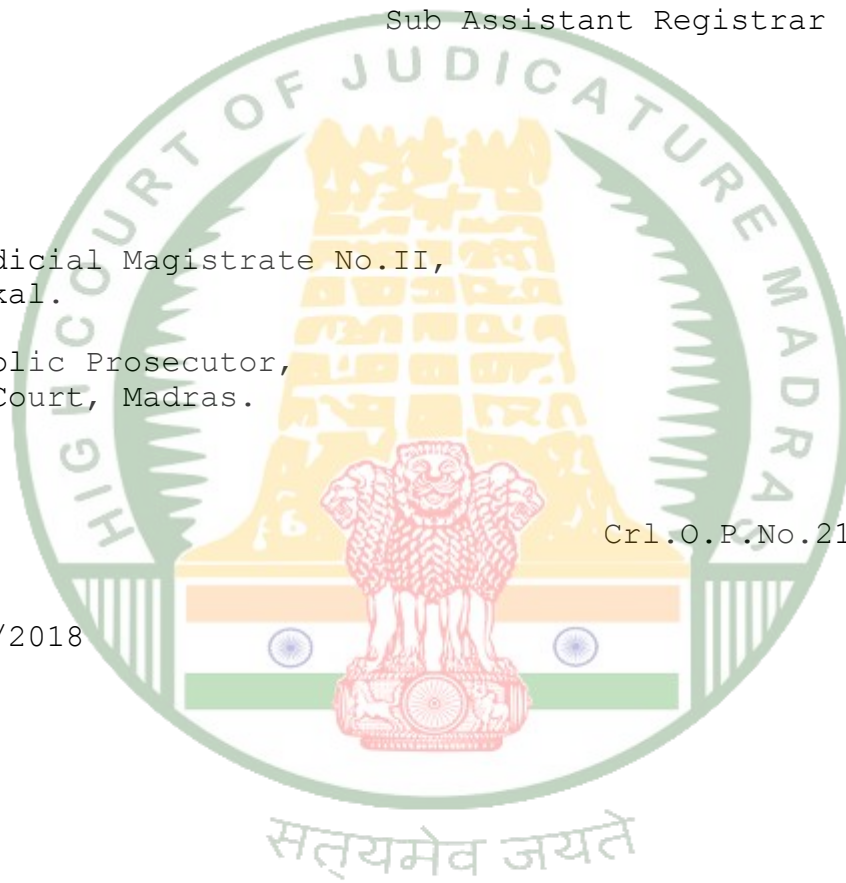
ssr/mkn

To

1. The Judicial Magistrate No.II,
Karaikal.
2. The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.21523 of 2018

srg 24/09/2018



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