

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.11445 of 2018

and

Crl.M.P.Nos.5943 and 5944 of 2018

Shahul Hameed

... Petitioner/Accused

Vs

Suresh Kannan

... Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in S.T.C.No.801 of 2017 on the file of the learned Judicial Magistrate No.I, Mannargudi and to quash the same.

For Petitioner : Mr.S.Arumugam

ORDER

This petition has been filed to quash the proceedings in S.T.C.No.801 of 2017 on the file of the learned Judicial Magistrate No.I, Mannargudi.

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

3.It is the case of the complainant that on 02.03.2016, the accused has borrowed Rs.2,00,000/- and to discharge the said liability, a Cheque was issued for a sum of Rs.2,00,000/- on 08.03.2017. When the complainant presented the cheque for encashment, the cheque was dishonoured for "Insufficient funds". Hence, the complainant issued notice on 11.03.2017 to the accused. Since the accused did not repay the amount, the complainant has initiated a prosecution in S.T.C.No.801 of 2017 before the learned Judicial Magistrate No.I, Mannargudi, under Section 138 of the Negotiable Instruments Act against the accused. Challenging which, the accused is before this Court.

4.Heard Mr.S.Arumugam, learned counsel appearing for the petitioner, who would submit that the impugned cheque was given through an Advocate by name Elancheran and that the said Advocate had handed over the impugned cheque to the complainant.

5. In this connection, the learned counsel appearing for the petitioner wanted to draw the attention of this Court to the complaint i.e., said to have been given by Elancheran against the accused herein.

6. In the opinion of this Court, disputed question of fact cannot be gone into in an application under Section 482 of Cr.P.C.

7. Hence, this Criminal original Petition is closed with liberty to the petitioner to raise all the points before the trial Court. Consequently, connected Miscellaneous Petitions are closed.

8. At this juncture, the learned counsel appearing for the petitioner seeks permission for dispensing with the personal appearance of the petitioner in the Trial Court.

9. Recording his submission, the petitioner is directed to surrender before the trial Court within a period of two weeks from the date of receipt of a copy of this order and file an application under Section 436(1) of CrPC for bail. On such application being filed, the petitioner shall be released on bail on the same day on his executing a bond for Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the trial Court. Thereafter, the petitioner shall appear before the trial Court for receiving the complaint, for questioning under Section 251 Cr.PC, at the time of questioning under Section 313 Cr.P.C. and at the time of passing judgment. For the other hearings, the petitioner shall file a petition before the trial Court under Section 317 Cr.PC., giving an undertaking that he will not dispute his identity and that the counsel named by him in the affidavit will cross-examine the prosecution witnesses on the day he is examined-in-chief, as held by the Supreme Court in Vinod Kumar vs. State of Punjab [2015(1) MLJ (Cr1) 288]. On such a petition being filed, the trial Court may liberally consider the same. If the accused adopts any dilatory tactics, it is open to the trial Court to insist upon his presence and remand him 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 accused absconds, the trial Court shall direct registration of an FIR against him under Section 229-A IPC.

Sd/-

Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

mps

To

1.The Judicial Magistrate No.I,
Mannargudi.

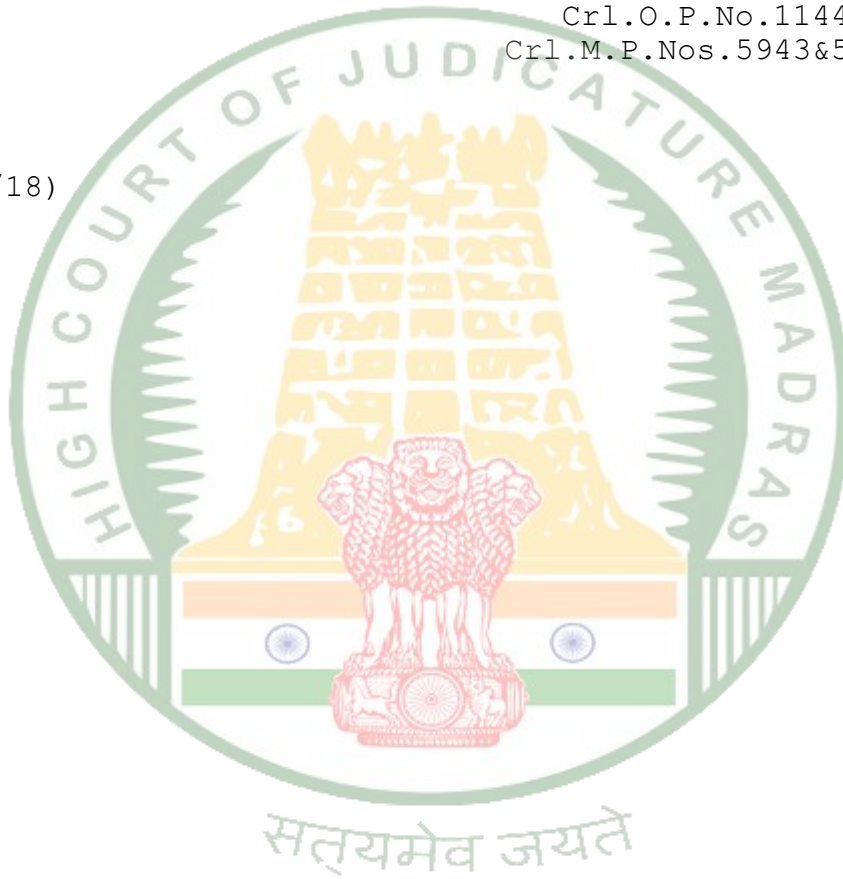
2.The Public Prosecutor,
Madras High Court,
Chennai.

+lcc to Mr.S.Arumugam, Advocate, sr.no.28670

Cr1.O.P.No.11445 of 2018 &
Cr1.M.P.Nos.5943&5944 of 2018

MP (CO)

RRK (29/05/18)



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