

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2018

CORAM

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

CrI.O.P. No.23776 of 2015

and

M.P.Nos.1 and 2 of 2015 and

CrI.M.P.No.15595 of 2017

1.R.K.Venkatathiri
2.R.Preethi ...Petitioners

vs.

S.Premchand ...Respondent

Criminal Original Petition filed under Section 482, Cr.P.C. to call for the records and quash the proceedings in C.C.No.2940 of 2014 on the file of the VII Metropolitan Magistrate, George Town, Chennai.

For petitioner : Mr.R.Thirumalai

For Respondents: M/s.Shah and Shah

O R D E R

This Criminal Original Petition has been filed seeking to call for the records and quash the proceedings in C.C.No.2940 of 2014 on the file of the VII Metropolitan Magistrate, George Town, Chennai.

2.For the sake of convenience, the parties are referred by their name.

3.It is the case of Premchand (complainant) herein that Venkatathiri (A1) and Preetha(A2) had borrowed a sum of Rs.20 lakhs for their business purposes. It is the further case of Premchand that four cheques, each for a sum of Rs.5 lakhs, dated 12.11.2013, were issued by the accused to the complainant for discharge of the debt. When the complainant presented the four cheques, they were dishonoured for insufficiency of funds. The

complainant issued a statutory notice dated 11.12.2013 to the accused. Thereafter, the complainant initiated the present prosecution in C.C.No.2940 of 2014 under Section 138 of the Negotiable Instruments Act against R.K.Venkatathiri (A1) and R.Preethi (A2) and the case is pending trial before VII Metropolitan Magistrate, George Town. Challenging the prosecution, Venkatathiri and Preethi are before this Court.

4.Heard the learned counsel for the petitioners/accused and the learned counsel for the respondent/complainant.

5.Learned counsel for the accused submitted that Premchand, the complainant is unknown to the accused and the accused had given the impugned cheques to a third party, who in turn, has handed over the four cheques to Premchand. Learned counsel also submitted that the impugned cheques have been issued by Venkatathiri in his capacity as Proprietor of Preethi Studios but however, the complainant has impleaded his daughter Preethi as the second accused and that Preethi had no role to play in the transaction.

6.Per contra, the learned counsel for the complainant, Premchand refuted the contention.

7.As regards the first ground of attack, the same is disputed question of fact and cannot be gone into in a quash application under Section 482 Cr.P.C. Therefore, liberty is granted to the accused to raise his point before the trial court. As regards the second ground of attack, learned counsel for Venkatathiri (A1) has unequivocally admitted that the cheque has been signed by Venkatathiri as Proprietor to Preethi Studio. Hence, Preethi cannot be prosecuted as a Proprietor concern, will not fall within the ambit of Section 141 of the Negotiable Instruments Act. In view of the admission by Venkatathiri that he has only affixed his signatures in the impugned cheques, the prosecution against his daughter Preetha is liable to be quashed. Hereafter it is not open to Venkatathiri to dispute the signatures in the impugned cheques.

8.In the result, prosecution in C.C.No.2940 of 2014 as against Preethi is hereby quashed. However, the prosecution shall proceed as against Venkatathiri, who is directed to appear before the trial court within two weeks from the date of receipt of a copy of this order and execute a bond under section 88 Cr.P.C. for Rs.5,000/- without sureties, as held in the decision of the Hon'ble Supreme Court in Indian Bank Association vs Union of India, 2014(5) SCC 590. Liberty is granted to Venkatathiri to raise all points before the trial court except disputing his signatures in the impugned cheques. The trial court is directed

to dispose of the case in C.C.No.2940 of 2014 within a period of six months from the date of receipt of a copy of this order. The criminal original petition is disposed of accordingly. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The VII Metropolitan Magistrate,
George Town, Chennai.

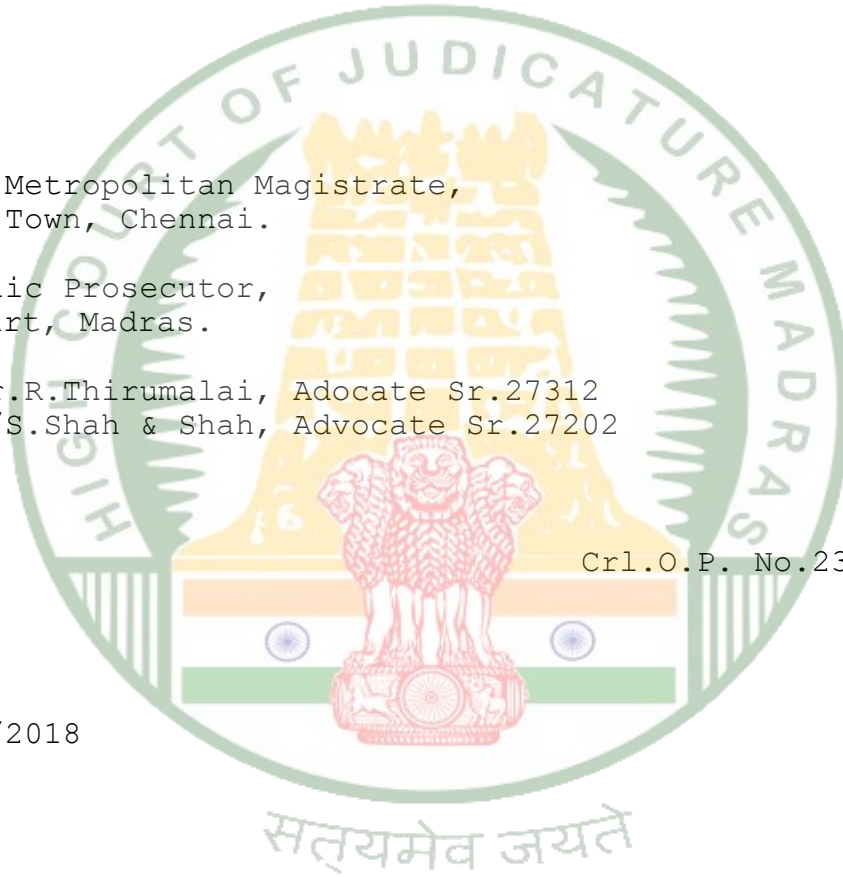
2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Thirumalai, Adocate Sr.27312

+3cc to M/S.Shah & Shah, Advocate Sr.27202

Cr1.O.P. No.23776 of 2015

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