

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2018

CORAM

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.8326 of 2013
and MP.No.1 of 2013

Sakthivel

S/o. Periasamy Gounder,
Proprietor
Mayajal Exports,
Opposite to M.S.K.Nagar,
Arachalur Road,
Chennimalai,
Perundurai Taluk.

... Petitioner/Respondent/
Accused

Vs.

Thayammal

...Respondent/Petitioner
Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 28.02.2013 passed in Crl.M.P.No.430 of 2013 in C.C.No.195 of 2011 on the file of District Munsif-cum-Judicial Magistrate, Perundurai and to allow the above Criminal Original Petition.

For Petitioner : Mr.S.Kaithamalai Kumaran
For Respondent : Mr.R.Nasrine

O R D E R

This petition has been filed by the accused to set aside the order passed by the District Munsif-cum-Judicial Magistrate, Perundurai in Crl.M.P.No.430 of 2013 in C.C.No.195 of 2011 dated 28.02.2013 to allow the Crl.M.P.No.430 of 2013.

2. The learned counsel for the petitioner has submitted that the respondent herein has filed a private complaint stating that the petitioner herein has committed offence under Section 138 of the Negotiable Instruments Act. He further submitted that during trial, the petitioner herein has filed an application under Section 91 of Cr.P.C in Crl.M.P.No.430 of 2013 to send for cheque return Register dated 23.09.2010 maintained by the ICICI Bank Ltd., Tiruppur Branch. He further submitted that the aforesaid document is absolutely necessary to prove the case of the petitioner that the cheque involved in the said case was not returned on 27.10.2010 as stated by the respondent in her complaint and only with a view to

disprove the said facts, the petitioner has filed Crl.M.P.No.430 of 2013.

3. He further submitted that the learned District Munsif-cum-Judicial Magistrate without considering the petitioner's contention, has mechanically rejected the petition by saying that he has filed this said petition with a view to drag on the proceedings. He further submitted that unless the said document is produced before the Court, the petitioner cannot establish his case and therefore, he prayed to allow this Criminal Original petition and set aside the order passed by the trial Court and allow the Crl.M.P.No.430 of 2013.

4. The learned counsel for the respondent has submitted that when the case was posted for defence side evidence, the petitioner has filed the above petition with a view to drag on the proceedings and hence, the trial Court has rightly rejected the said petition and therefore, he requested to dismiss the petition.

5. The respondent herein has filed a Private complaint under Section 138 of the Negotiable Instruments Act alleging that the cheque which was issued by the petitioner herein was returned by the bank on 27.10.2010, But, according to the petitioner, the said cheque was returned on 21.09.2010 itself and hence the statutory notice was not issued within the time prescribed under the Act. So, in order to prove the said fact, the petitioner has filed petition to send for the cheque returned Register. Since the petitioner/accused disputed the case of the complainant that the concerned cheque was not returned on 27.10.2010, the trial Court ought to have given an opportunity to the petitioner/accused to disprove the case of the complainant. If the cheque returned register is called for and marked as Exhibit that it would throw light with regard to the fact when actually cheque was returned. Therefore, this Court is inclined to allow this petition.

6. In the result, this petition is allowed. The order passed by the learned District Munsif-cum-Judicial Magistrate, Perundurai in Crl.M.P.No.430 of 2013 in C.C.No.195 of 2011 dated 28.02.2013 is set aside. The Crl.M.P.No.430 of 2013 in C.C.No.195 of 2011 is allowed and the learned District Munsif-cum-Judicial Magistrate is directed to send for cheque returned Register dated 23.09.2010 maintained by ICICI Bank Ltd., Tiruppur Branch and dispose of the case in accordance with law. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

msrm

To

1. The District Munsif-cum-Judicial Magistrate,
Perundurai.

2.The Public Prosecutor,
High Court, Madras.

Copy to:The Section Officer
Criminal Section
High Court, Madras

+1cc to M/s.S.K.Kaithamalai Kumaran, Advocate SR.No.56717

GMI (CO)
sm:16.10.2018

CrI.O.P.No.8326 of 2013
and MP.No.1 of 2013



WEB COPY