

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.7387 of 2011
and
M.P.Nos.1 & 2 of 2011

M.Geetha,
W/o.G.G.Devarajan

... Petitioner/Accused

Vs.

Development Credit Bank Ltd.,
Duly represented by its
authorized signatory,
Mr.R.Prakesh,
Having its office at
No.177, Prakasam Salai,
Broadway, Chennai - 600 001.

...Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the case in C.C.No.5580 of 2010 on the file of the learned VII Metropolitan Magistrate, George Town, Chennai.

For Petitioner : No appearance

For Respondent : No appearance

सत्यमेव जयते
O R D E R

This Criminal Original Petition is filed to call for the records and quash the case in C.C.No.5580 of 2010 on the file of the learned VII Metropolitan Magistrate, George Town, Chennai.

2. There is no representation for the petitioner. It is seen from the docket entries that on 27.04.2017, this Court has directed the petitioner to take private notice returnable by 10.07.2017 and further directed him to file proof of service within three days, failure of the same, orders to be passed. No steps have been taken by the petitioner. Today when the case was called, none represented for the petitioner, further adjourning the case without any progress would amount to serve

no purpose except to keep the criminal case pending for years. In this back drop, on perusal of records, the orders in the above Original Petition is rendered on merits.

3.For the sake of convenience, the petitioner and the respondent hereunder are referred to as "Accused" and "Complainant".

The petitioner is the accused in a case filed under Section 138 Negotiable Instrument Act by the respondent/complainant before the VII Metropolitan Magistrate Court, George Town, Chennai. The facts of the case is that the complainant who is a Banking Institution carrying on financial assistance business, was approached by the accused. The accused is the proprietor of M/s. G.Y.Deva Transport, Gummidipoondi, who had applied for commercial equipment loan and on executing of documents, the complainant had sanctioned loan and the accused on entering into an agreement had obtained the commercial equipment loan on 07.09.2007 vide agreement No.06053600000152 to the tune of Rs.18,90,000/- (Rupees eighteen lakh ninety thousand only) and the loan amount was repayable in 41 equated monthly installments of Rs.1,40,460/- (Rupees one lakh forty thousand four hundred and sixty only) per month. In discharge of the liability, the accused had issued a cheque bearing No.546817 dated 18.08.2010 for Rs.1,40,460/- drawn on Canara Bank, Karanodai in favour of the complainant, being the equated monthly installment amount.

4.The complainant presented the above said cheque with its bankers viz., Development Credit Bank Limited on 22.09.2010 and the said cheque was dishonoured with an endorsement "Funds insufficient". The complainant was informed about the said return of cheque on 23.09.2010, for which, the complainant had issued a statutory notice to the accused on 06.10.2010 calling upon the accused to repay the amount covered in the cheque, within 15 days. Despite the receipt of the said notice by the accused on 11.10.2010, the accused had not made any payment and invited the case under the provisions of Negotiable Instruments Act. On complying with the procedures, the complainant had filed the complaint against the accused under Section 138 of Negotiable Instruments Act before the VII Metropolitan Magistrate Court, George Town, Chennai, which had been taken on file and assigned the number as C.C.No.5580 of 2010. Against which, the present Original Petition had been filed by the accused.

5.The only contention of the accused is that the cheque pertaining to the above case bearing No.546817 drawn on Canara Bank, Karanodai does not belong to the accused and it belongs to her husband and the accused is neither the proprietor of the

accused company nor its authorized signatory and hence, projects the above case as abuse of process of law and the criminal complaint has to be quashed.

6.It is pertinent to note that the husband of the accused one Mr.G.G.Devarajan, also filed a supporting affidavit affirming the same stating that he is the drawer of the cheque and he is the Proprietor of the accused company. Further, he contends that the cheque was given only by him and he affirmed that he had issued the cheque only as security towards the loan availed from the complainant.

7.The grounds raised by the accused along with the supporting affidavit filed by the husband of the accused does not make out a case for quashing. The contention of the accused has exposed the criminal intend of the accused in executing the equated monthly installment cheques to the complainant while availing the loan. It is pertinent to note that the accused has not disputed the execution of the cheques to the complainant for repayment of loan for equated monthly installments. It is seen that the accused has received the statutory notice on 11.10.2010, but had not replied to the same.

8.In Negotiable Instruments Act Chapter XVII has been inserted to gain confidence and acceptability of Negotiable Instruments in commercial transactions. Hence, these kind of frivolous defence are to be deprecated, cases arising out of Negotiable Instruments Act are to be disposed off, within a stipulated time. This case has been kept pending before the Lower Court from the year 2010 onwards without any progress due to the pendency of the above Criminal Original Petition. It could also seen from the letter dated 20.04.2011, the Registry has requested the Trial Court to sent the entire records in C.C.No.5580 of 2010 and hence the Trial has been put on hold.

9.From the above, it could be seen nothing survives in the above case. Hence, the Criminal Original Petition stands dismissed. Registry is directed to send back the entire records in C.C.No.5580 of 2010 to the concerned Trial Court immediately and the Trial Court is directed to dispose off the above case, within a period of three months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Deputy Registrar

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Sub Assistant Registrar

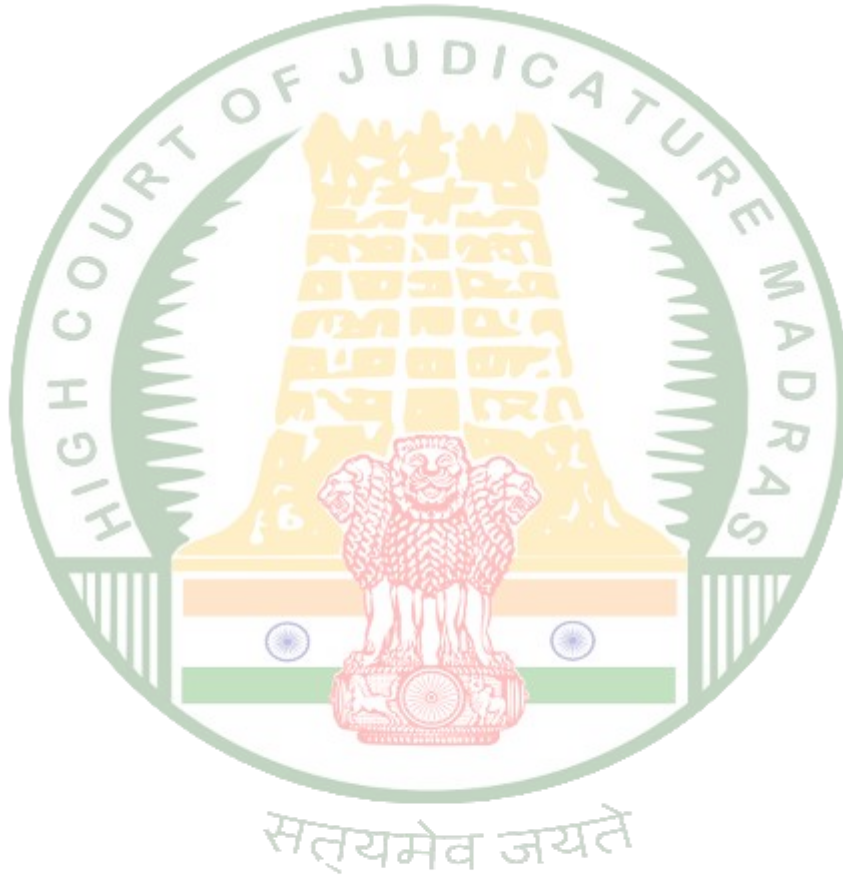
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To

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

Cr1.O.P.No.7387 of 2011

nr 11/07/2018



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