

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.OP.No.15485 of 2018

and

CRL.MP.Nos.7877 & 7878 of 2018

T.L.Srinathan

.. Petitioner

Vs

A.Ganesh

.. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records culminating in STC.No.177 of 2018 dated 27.03.2018 on the file of the FTC [Magisterial Level] at Poonamallee and quash the same.

For Petitioner : Mr.S.Sivaraman

O R D E R

This petition has been filed to quash the proceedings in STC.No.177 of 2018 on the file of the FTC [Magisterial Level], Poonamallee.

2.For the sake of convenience, the parties will be referred to as the complainant and the accused. It is the case of the complainant that on 15.10.2017, the accused borrowed Rs.2,25,000/- for his business purposes; that the accused gave a cheque dated 08.02.2018 for Rs.2,25,000/-; that the complainant presented the cheque on 09.02.2018 and the same was returned unpaid with an endorsement "please contact drawer drawee B"; that the complainant contacted the accused and the accused requested the complainant once again to re-present the cheque and accordingly, the complainant re-presented the cheque on 13.02.2018 and the cheque was dishonoured on the same ground; that the complainant issued statutory notice dated 16.02.2018 which was received by the accused on 21.02.2018; that the accused did not reply to the notice and also did not make any payment. Therefore, the complainant has initiated a prosecution in STC.No.177 of 2018 and the same is now pending on the file of the FTC, Magisterial Level at Poonamallee. For quashing which,

the accused is before this Court.

3.Mr.Sivaraman, learned counsel for the accused submitted that the complainant is not known to the accused at all and that the complainant has managed to obtain the cheque of the accused, with which he has launched the present prosecution. He has also submitted that cheque was not dishonoured on the ground of insufficiency of funds, but, on the ground of "please contact drawer drawee B".

4.Mr.Sivaraman further contended that the complainant did not contact the accused, after the cheque was returned on the first presentation. In the opinion of this Court, in the light of the law laid down by the Hon'ble Supreme Court in S.Krishnamurthy Vs Chellammal reported in [2015] 4 SCALE 371, disputed question of facts cannot be gone into in quash proceedings. The fact remains that the accused did not reply to the statutory notice that was issued by the complainant. During trial, the complainant should establish the ingredients of offence under Section 138 of Negotiable Instruments Act, 1881. Hence, this petition is devoid of merits and is dismissed with liberty to the petitioner to raise all the points before the trial Court during trial. Consequently, connected Miscellaneous Petitions are closed.

5.Mr.Sivaraman, learned counsel for the accused submitted that the presence of the accused before the trial Court may be dispensed with.

6.Accepting his submission, the accused shall surrender before the trial Court within two weeks from the date of receipt of a copy of this order. On such surrender, he shall file an application under Section 436 of Cr.P.C. for bail. The trial Court shall release the accused on bail on the same day, on he executing a bond for Rs.10,000/- with two solvent sureties. Thereafter, the accused shall appoint an Advocate on special vakalat. The accused shall give an undertaking that he will not dispute his identity and that his Advocate will cross-examine the witnesses on the day they are examined in-chief, as held by the Supreme Court in Vinodh Kumar Vs State of Punjab reported in 2015[1] MLJ [Cr1] 288. The accused shall appear before the trial Court to answer the question under Sections 251 Cr.P.C., 313 Cr.P.C. and on the date of judgment. For other hearings, if the accused files an application under Section 317 Cr.P.C., the same shall be liberally considered and thereafter, the presence of the accused shall stand dispensed with. If the accused adopts any dilatory tactics, the trial Court shall insist upon the presence of the accused. If the accused absconds, a fresh FIR can be registered against him under Section 229-A of IPC. The trial Court is directed to complete the trial in STC.No.177

of 2018 within a period of six weeks from the date of receipt of a copy of this order, provided the accused co-operates and there is no other legal impediment.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

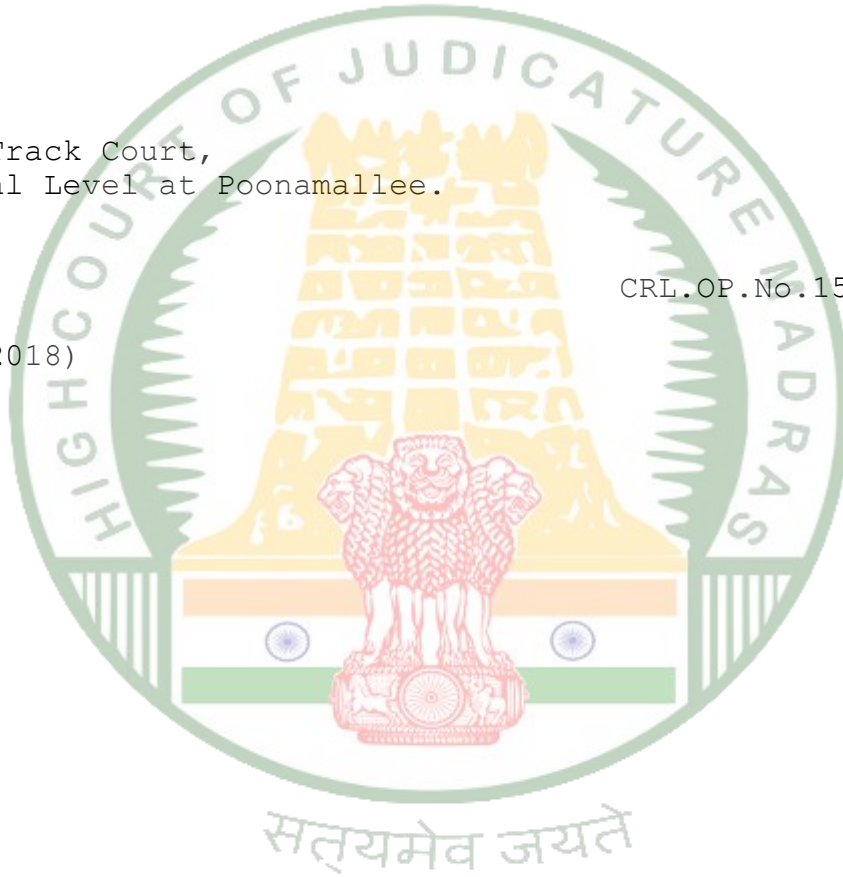
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To

The Fast Track Court,
Magisterial Level at Poonamallee.

CRL.OP.No.15485 of 2018

GN(21/06/2018)



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