

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2018

C O R A M

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.15757 of 2018

and

CRL.M.P.Nos.8062 and 8063 of 2018

B.Rajasekaran

...Petitioner

Vs.

Saveri Selvanathan
rep. by its Power Agent Selvananthan

... Respondent

Criminal Original Petition is filed under Section 482 of Cr.P.C to call for the entire records connected with, in C.C.No.120 of 2015 on the file of Judicial Magistrate-II, Fast Track Court at Magistrate Level, Coimbatore District and quash the same.

For Petitioner : Mr.P.Saravanan

O R D E R

This criminal original petition has been filed to call for the entire records in C.C.No.120 of 2015 on the file of the Judicial Magistrate-II Court, Fast Track Court at Magistrate Level, Coimbatore District and quash the same.

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

3. It is the case of the complainant that the accused borrowed a sum of Rs.20,00,000/- as hand loan from him on 28.08.2014 for his urgent business purpose, agreeing to pay interest at the rate of 24% per annum and that they entered into a Memorandum of Undertaking dated 28.08.2014, under which, the accused gave four cheques; the complainant presented the first cheque bearing No.105350 dated 10.09.2014 for Rs.5,40,000/- for collection on 11.09.2014 and the said cheque was returned as dishonored; the complainant presented the second cheque bearing no.105351 dated 15.12.2014 for Rs.5,40,000/- and the said cheque was returned with the

endorsement "Signature differs"; the complainant issued a notice dated 18.12.2014 for which, the accused gave a reply dated 02.01.2018 refuting the allegations. Since the accused did not make the payment, the complainant has initiated a prosecution under Section 138 of the Negotiable Instruments Act, 1881 (for short "the N.I. Act"), which is now pending trial in C.C.No.120 of 2015 on the file of the Judicial Magistrate-II, Fast Track Court, Coimbatore District, for quashing which, the accused is before this Court.

4. This petition was listed on 19.06.2018. At that time, the learned counsel for the petitioner/accused sought adjournment and the matter was adjourned to 26.06.2018. On 26.06.2018, the learned counsel for the petitioner/accused sought further adjournment and the case was adjourned to 03.07.2018 finally. On 03.07.2018, the learned counsel sought further adjournment and therefore, the matter is posted today under the caption "For Dismissal" finally. Today also, the learned counsel for the petitioner/accused sought adjournment. However, this Court has refused the request for adjournment and perused the papers.

5. It is the submission of the accused that if a cheque is returned on the ground that the drawer's signature differs, a prosecution under Section 138 of the N.I. Act, cannot be maintained.

6. In the opinion of this Court, even on that ground, a prosecution under Section 138 of the N.I. Act can be maintained, because, a person can deliberately sign differently and issue a cheque to a lender and gain time. In fact, it may even attract Section 420 IPC in a given case.

7. The accused has taken a ground that an enquiry under Section 202 Cr.P.C., should have been conducted before issuing process. In this case, though the complainant and the accused are living in Coimbatore District, the prosecution has been launched before the Judicial Magistrate-II in Coimbatore. The complaint prima facie discloses the commission of an offence under Section 138 of the N.I. Act. Therefore, there is no scope for the Magistrate to conduct an enquiry under Section 202 Cr.P.C. The accused has even replied to the statutory notice that was issued by the complainant. Therefore, the accused cannot take a plea that Section 202 Cr.P.C. enquiry should have been conducted in the present case. Hence, this plea of the accused stands rejected. The accused has taken certain other pleas, which are disputed questions of fact and the same cannot be gone into a quash application in the light of the law laid down by the Supreme Court in S.Krishnamurthy vs Chellammal [2015] 4 Scale 371].

8. Hence, this petition is dismissed as being devoid of merits. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

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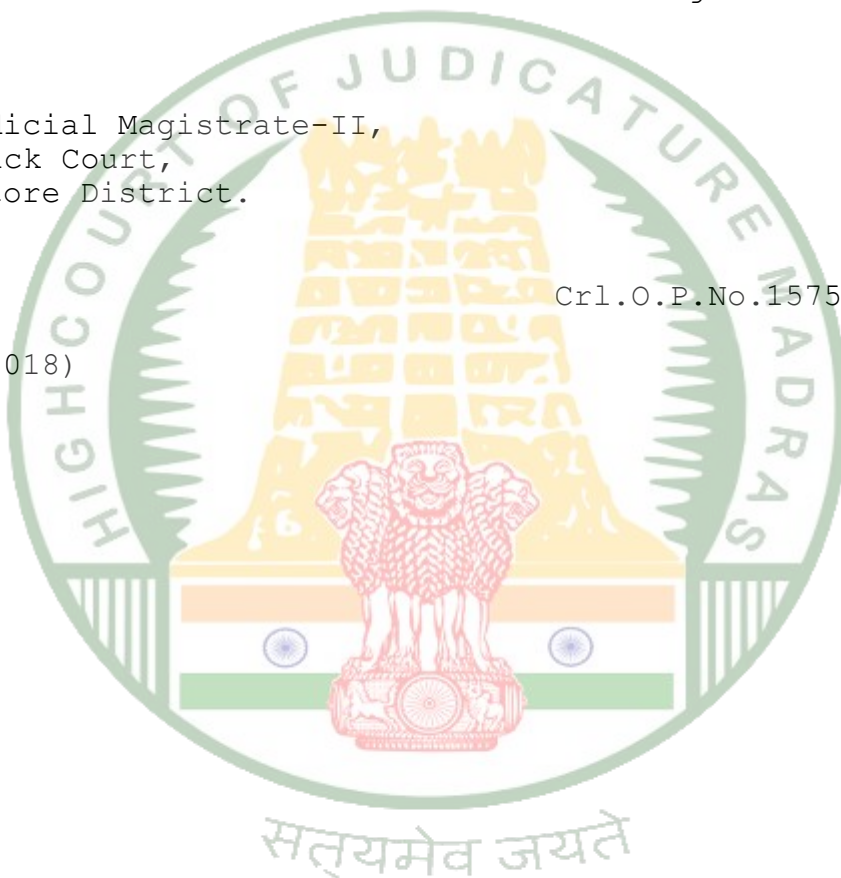
Sub Assistant Registrar

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To

1. The Judicial Magistrate-II,
Fast Track Court,
Coimbatore District.

(CS-VII)
EU(20/07/2018)

Cr1.O.P.No.15757 of 2018



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