

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2018

CORAM:

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

Crl.O.P. No.16132 of 2018 & Crl.M.P. No.8280 of 2018

Garden Super Market
represented by its Proprietrix
O.V. Thankam
D/o Kelu Nambbiar
Thankam Nivas
P.O. Chirkkal
Chirkkal R.S.
Kannur 670 011
State of Kerala ..Petitioner

vs.

P.S. Security Agency
represented by its Proprietor
P. Surendran
No.S-5, TNHB Shopping Complex
Opp. Dr. Ambedkar College
Vysarpadi
Chennai 600 039
represented by Power Holder S. Pranav ..Respondent

Criminal Original Petition filed under Section 482
Cr.P.C. seeking to call for the entire records pertaining to
the proceedings in C.C. No.2895 of 2018 pending on the file of
the Metropolitan Magistrate, Fast Track Court No.I, Egmore,
Chennai and quash the same.

For petitioner Mr. Om Sai Ram
For respondent Mr. K. Raja

ORDER

This Criminal Original Petition has been preferred
seeking to call for the entire records pertaining to the
proceedings in C.C. No.2895 of 2018, pending on the file of
the Metropolitan Magistrate, (Fast Track Court No.I,) Egmore,
Chennai and quash the same.

2 For the sake of convenience, the petitioner and the
respondent are referred to as the first accused and
complainant respectively.

3 It is the case of the complainant that Thankam, Proprietrix of the first accused firm agreed to induct the complainant's son Pranav as a partner in the firm run by her and thereafter, reneged. In this connection, the complainant had given a sum of Rs.23 lakhs to Thankam and her son Ajith Kumar. In discharge of the said liability, Ajith Kumar, the second accused, has issued the impugned cheque dated 01.10.2017 for Rs.23 lakhs in favour of the complainant, which, when presented by the complainant, was dishonoured and hence, the complainant has initiated a prosecution in C.C. No.2895 of 2018 under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act") against Thankam and Ajith Kumar and the same is pending on the file of the Metropolitan Magistrate (Fast Track Court No.I), Egmore, Chennai, for quashing which, the first accused is before this Court on the short point that the impugned cheque was not issued by her nor was it issued by a juristic person, but, has been issued by the second accused, i.e., her son from his personal account.

4 The short point that falls for the consideration of this Court is whether the first accused can be mulcted with criminal liability under Section 138 of the NI Act.

5 The learned counsel for the complainant submitted that the first accused has admitted the liability unequivocally and therefore, she is a necessary party in the prosecution in order to prove the debt.

6 That a prosecution under Section 138 of the NI Act can be initiated only as against the drawer of the cheque is trite. The cheque can be issued by the drawer to discharge the liability of any other person, but, nevertheless, the latter cannot be made as an accused on that ground.

7 Under such circumstances, the prosecution as against the first accused, viz., Thankam in C.C. No.2895 of 2018 alone is quashed and the proceedings shall go as against the second accused. The Trial Court is directed to complete the trial in C.C. No.2895 of 2018 within a period of six months, provided there is no other legal impediment.

This Criminal Original Petition stands partly allowed. Connected CrI.M.P. is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

To

1 The Metropolitan Magistrate
Fast Track Court No.I
Egmore, Chennai

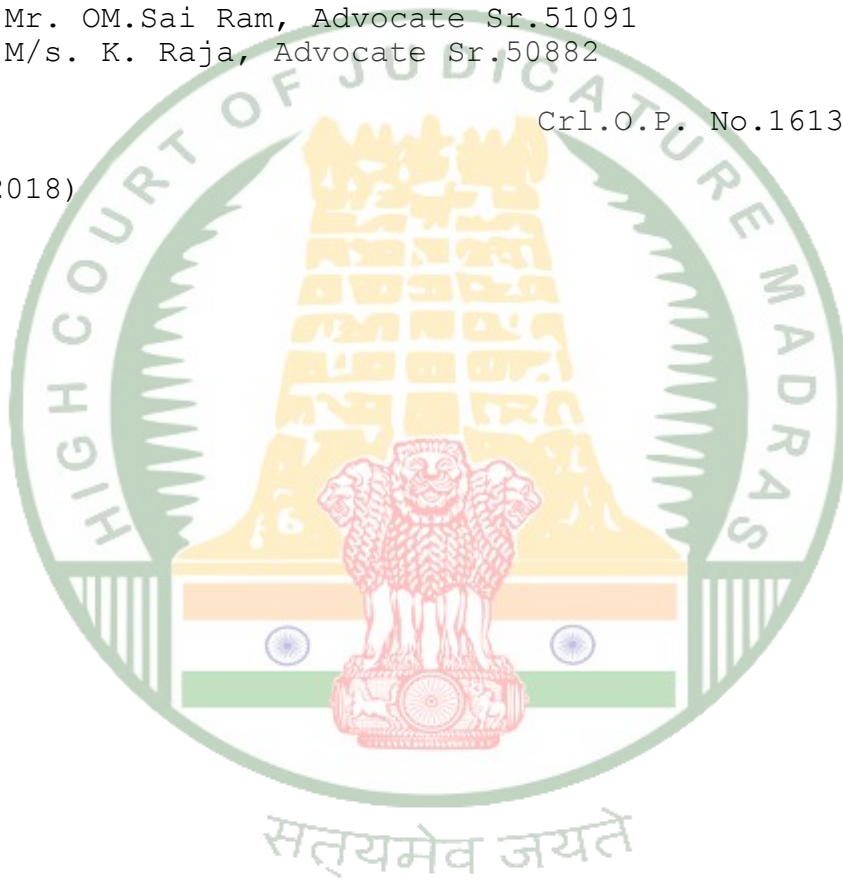
2 The Public Prosecutor
High Court of Madras
Chennai 600 104

+ 1 cc to Mr. OM.Sai Ram, Advocate Sr.51091

+ 1 cc to M/s. K. Raja, Advocate Sr.50882

Crl.O.P. No.16132 of 2018

(CS-IX)
EU(11/08/2018)



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