IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2018

CORAM:

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

Crl.O.P. No.17168 of 2018

Mahindra & Mahindra Financial Service Ltd.
having its office at Gateway Building
Apollo Bunder
Mumbai 400 001
with its Corporate Office: at Sadhana House
II Floor, 570 P.B. Marg
Behind Mahindra Towers, Worli
Mumbai 400 018
Branch Office at SBI Commercial Branch Upstairs
No.45, Office No.1, II Floor
(Near Bus Stand), Sathy Road
Erode 638 003
Represented by its Power of attorney
S. Kamalraj (aged about 34 years)
S/o V. Subbarayan
Deputy Manager - NPA & BD Vertical
Petitioner/Complainant

vs.

P. Deepalatha
Respondent/Accused

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to set aside the order of return dated 09.02.2018 passed by the Fast Track Judicial Magistrate No.I, Erode in S.T.C.R. No.3040 of 2018 and issue necessary direction to take on file the case filed by the petitioner in accordance with law.

For petitioner Mr. A. Prabhakaran

ORDER

This Criminal Original Petition has been preferred seeking to set aside the order of return dated 09.02.2018 passed by the Fast Track Judicial Magistrate No.I, Erode in S.T.C.R. No.3040 of 2018 and issue necessary direction to the said Magistrate to take on file, the case filed by the petitioner.

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

3 The complainant is a company, which is into the business of finance. The case of the complainant is that they have sanctioned a hire purchase loan to the accused vide loan account no.2156522 on 07.08.2012 for a sum of Rs.4 lakhs for the purchase of a Ford Figo car; the accused had defaulted in the payment of the monthly dues; a sum of Rs.1,43,240/- was due to the complainant; while so, the accused, agreeing to pay a sum of Rs.1,40,000/- as full and final settlement, issued the impugned cheque dated 05.12.2017 for a sum of Rs.1,40,000/-, which, when presented by the complainant, was dishonoured for insufficiency of funds on 06.12.2017; hence, the complainant issued a legal notice dated 23.12.2017 to the accused and since the accused did not make any payment, the complainant presented a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short "the NI Act") before the Judicial Magistrate No.1 (Fast Track Court) Erode on 07.02.2018; the said Magistrate returned the complaint with the following endorsement:

> "Returned: 09.02.2018
>
> 1. Hire Purchase agreement to be produced
> 2. Loan sanction letter and loan approved letter to be produced
> 3. Status of vehicle to be produced
> 4. OTS agreement to be produced.
>
> Time one month.
>
> J.M. (FTC) Erode"

challenging the said endorsement, the complainant is before this Court seeking the aforesaid prayer.

4 Heard the learned counsel for the complainant, who submitted that the Magistrate should not have returned the complaint on the aforesaid grounds and that he should have taken the complaint on file.

5 The report called from from the Magistrate discloses that he had returned the complaint on the aforesaid grounds since, before taking cognizance on the complaint, he wanted to satisfy himself as to whether there was an enforceable debt. His further explanation is that in cases arising under hire purchase agreements, the vehicles are either seized or One Time Settlements are entered into between the parties, and the complainants, who are finance companies, do not even disclose those vital facts in the complaint and merely rest their case on the dishonoured cheques.

6 In the opinion of this Court, the reasons assigned by the Magistrate for returning the complaint cannot be said to be improper, especially in the light of the explanation given by him. It is seen that scores of complaints are being filed by finance companies throughout the State. In some cases, for the absence of the accused, arrest warrants are obtained and settlements are arrived at with the Damocle's sword of arrest hanging over the head of the borrower. In order to regulate the burgeoning prosecutions under Section 138 of the NI Act, the method adopted by the Magistrate in calling upon the complainant to first satisfy him prima facie about the existence of a legally enforceable debt, cannot be said to be improper warranting interference by this Court. Every Magistrate, before taking cognizance of an offence under Section 138 of the NI Act, should satisfy himself that the complaint discloses the necessary facts to take cognizance of the said offence, before issuing process to the accused.

In the result, this Criminal Original Petition is dismissed with a direction to the Registry to take a photocopy of the impugned complaint and after certifying the same, to hand over the original complaint to the counsel for the complainant, so that the complaint is re-represented with explanation to the queries raised by the Magistrate. One month time, from the date of receipt of the original complaint from the Registry, is given to the complainant for re-presentation of the complaint.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

cad
To

1 The Fast Track Judicial Magistrate No.I
Erode

2 The Public Prosecutor
High Court of Madras
Chennai 600 104

+1cc to Mr. A. Prabhakaran, Advocate sr.no.44222

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rj(co)
nr 17/07/2018