

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.12647 of 2018

and Crl.M.P.Nos.6802 and 6803 of 2018

A.Kalaiselvi

.. Petitioner

Vs

G.Narayanan

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.267 of 2017 on the file of the learned XXIII Metropolitan Magistrate and quash the proceedings.

For Petitioner : Mr.S.Ramajayam
For Respondent : Mr.N.Kumar Rajan

O R D E R

This petition has been filed to call for the records in C.C.No.267 of 2017 on the file of the XXIII Metropolitan Magistrate and quash the said proceedings.

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

3. It is the case of the complainant that the accused had borrowed Rs.19,80,000/- over a period of two years as hand loan and thereafter, the accused had issued a cheque dated 02.06.2016 drawn on Citibank, Chennai for Rs.19,80,000/- and that when the cheque was presented for clearance, the complainant was informed that the Bank account of the accused was closed much earlier to the issuance of the cheque. Therefore, the complainant has filed a private complaint in C.C.No.267 of 2017 before the XXIII Metropolitan Magistrate, Saidapet, Chennai against the accused, challenging which, the accused is before this Court.

4. Heard the learned counsel for the accused and learned counsel for the complainant.

5. Learned counsel for the accused submitted that a cheque is a bill of exchange under Section 6 of the Negotiable Instruments Act, 1881 and that if it is dishonoured, the remedy available is to file a suit for breach of contract or initiate a prosecution under Section 138 of the Negotiable Instruments Act. In this regard, he placed strong reliance upon an unreported judgment of the Supreme Court in Veer Prakash Sharma and Anil Kumar Agarwal and another [Crl. A. No. 980 of 2007] and a judgment of this Court in M/s Tambraparni Containers P. Ltd. vs. A.P.Varghese [(2014) 3 MWN (Cri) 382].

6. Per contra, learned counsel for the respondent submitted that in this case, on the date when the accused issued the cheque, he knew, for certain, that the Bank account was closed and therefore, there are prima facie materials to show that there is deception at inception.

7. This Court gave its anxious consideration to the rival submissions.

8. In Veer Prakash Sharma (supra), the accused therein has issued a cheque which was dishonoured simpliciter. The complainant in that case had made it to appear that the dishonour of the cheque was a contrived action of the accused. In those circumstances, the Supreme Court held that for attracting Section 415 IPC, there should be deception at inception. In Tambraparni (supra), the accused issued a cheque which was dishonoured on the ground of "stop payment". In those circumstances, this Court held that an offence under Section 429 IPC cannot be maintained.

9. In this case, as stated above, the accused had closed the bank account and thereafter, issued the cheque towards the discharge of his liability and therefore, the facts obtaining in this case are different from the facts in the cases referred to above. When a complaint is filed, the Magistrate will take cognizance of the offence and issue process to the accused. In this case, process has been issued to the accused and he has appeared before the Magistrate. Thereafter, it is for the complainant to adduce evidence under Section 244 Cr.P.C. before framing charge. At that time also, there is a remedy available to the accused to plead discharge.

Hence, this petition is dismissed with a direction to the trial Court to complete Section 244 Cr.P.C. enquiry within three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

gms

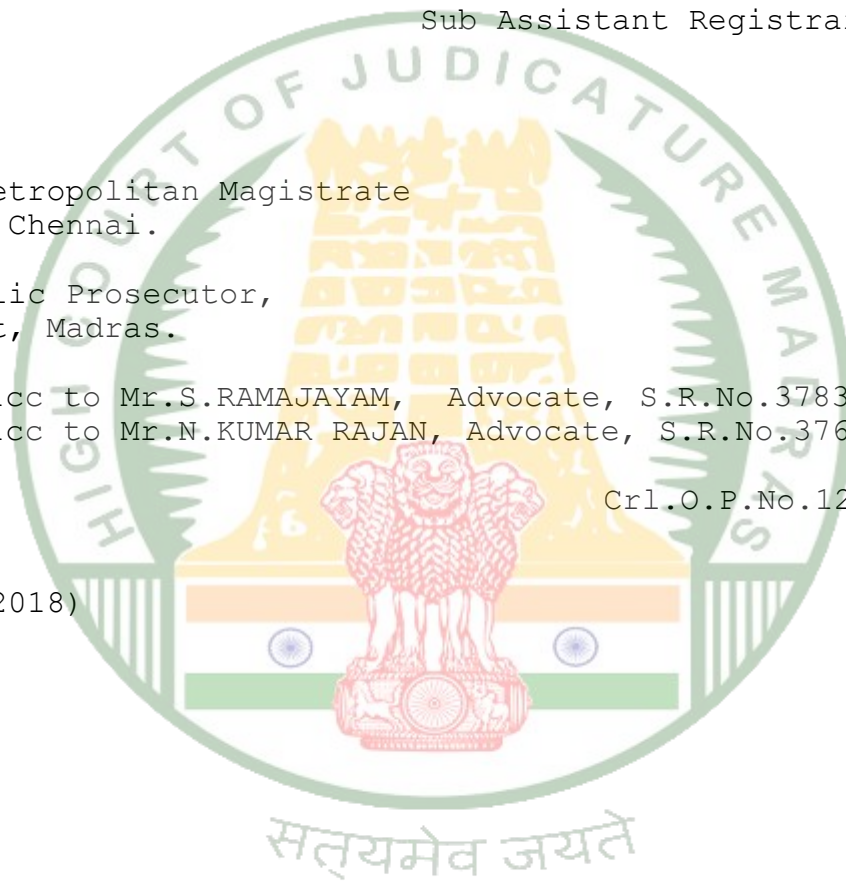
To
1.XXIII Metropolitan Magistrate
Saidapet, Chennai.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.RAMAJAYAM, Advocate, S.R.No.37833
+1cc to Mr.N.KUMAR RAJAN, Advocate, S.R.No.37664

CrI.O.P.No.12647 of 2018

TR(26/06/2018)



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