

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2018

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.27397 of 2018

and Crl.M.P.Nos.15831 & 15833 of 2018

1.M/s.Magic Motors

Rep. by its Managing Partner
Mr.Nishant P. Bhutada ABB Circle,
Mahatma Nagar,
Nashik, Maharashtra - 422 005.

2.Nishant Prakash Chandra Bhutada
Managing Partner

3.Prakash Chandra Gangabisan Bhutada
Partner

4.Kanchan Prakash Chandra Bhutada
Partner

5.Sarita Nishant Bhutada
Partner

...Petitioners

-Vs-

M/s.Nissan Renault Financial Services
India Pvt.Ltd.,

Rep. By its Deputy Manager - Risk and Collection
Mr.Y.Gokulakrishnan,
ASV Ramana Towers, 5th Floor,
No.52, Venkatanarayana Road,
T.Nagar, Chennai - 600 017.

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in C.C.No.4907 of 2018 on the file of the Fast Track III, Metropolitan Magistrate at Saidapet, Chennai and quash the proceedings.

For Petitioners : Mr.R.Thiagarajan

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.4907 of 2018, pending on the file of the Fast Track Court No.III, Metropolitan Magistrate at Saidapet, Chennai.

2. The learned counsel for the petitioners brought to the notice of this Court document dated 21.07.2015, which is said to have been issued by the respondent to the complainant. By relying upon the document, the learned counsel for the petitioners would submit that there was no enforceable debt or liability on the date of the issuance of cheque and it was given only as a security. The learned counsel would further contend that the letter itself makes it clear that it was a blank cheque even without there being a signature. Therefore, the learned counsel for the petitioner would submit that the very basis on which the criminal complaint has been filed by the respondent for an alleged offence under Section 138 of Negotiable Instruments Act is an abuse of process of Court and requires interference of this Court.

3. The letter dated 21.07.2015 that has been brought to the notice of this Court, at the best can only be a defence document which can be used by the petitioners during the course of trial. The document in question will be subject to appreciation of evidence by the Court below during the course of trial. This Court, while considering the petition under Section 482 Cr.P.C. cannot rely upon the defence documents. This position has been made clear by the Hon'ble Apex Court in various judgments.

4. Therefore, this Court is not in a position to accept the submissions made by the learned counsel for the petitioner. Hence, this Court does not want to interfere with the proceedings pending before the Court below at this stage.

5. This Criminal Original Petition is disposed of by giving liberty to the petitioner to raise all the grounds before the Court below in the course of the proceedings and the Court below shall consider the same on its own merits and in accordance with law. The petitioner is also entitled to mark the letter dated 21.07.2015 before the Court below as defence document and it is for the Court below to take it into

consideration at the time of deciding the case finally.
Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

vsa/lpp

To

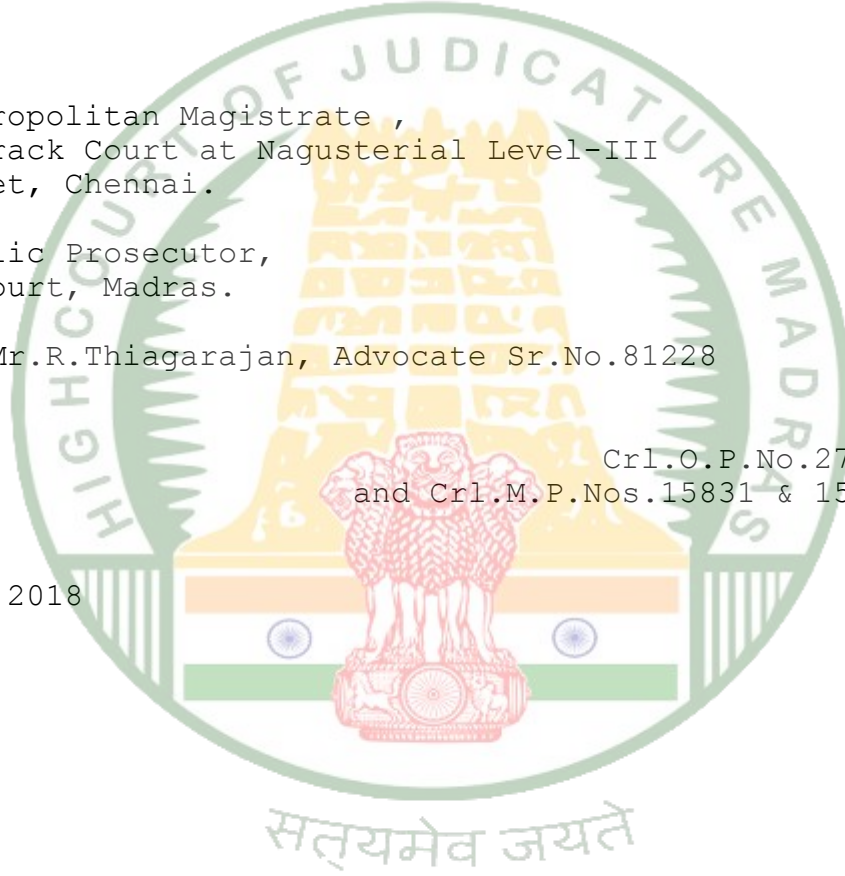
1.The Metropolitan Magistrate ,
Fast Track Court at Nagusterial Level-III
Saidapet, Chennai.

2.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.R.Thiagarajan, Advocate Sr.No.81228

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CSL/13.12.2018



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