



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Cr1.O.P.[MD].No.16766 of 2016

and

Cr1.M.P(MD)Nos.8299 and 8300 of 2016

WEB COPY

M.S.Bapuson

: Petitioner

Vs.

C.Sundar Raj

: Respondent

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records pertaining to the complaint in S.T.C.No.559 of 2013 on the file of the Judicial Magistrate No. I Kuzhithurai and quash the same.

For Petitioner : Mr.C.K.M.Appaji

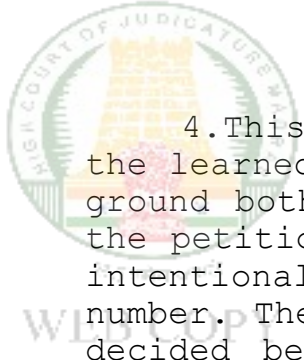
For Respondent : No Appearance

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in S.T.C.No.559 of 2013 on the file of the Judicial Magistrate No.I, Kuzhithurai.

2.The learned counsel for the petitioner would submit that the cheque in this case has been returned on the ground that the account number is incomplete. Therefore, the learned counsel would submit that the complaint itself is not maintainable before the court below. The learned counsel for the petitioner for this purpose relied upon Section 138 of the Negotiable Instruments Act, wherein it is specified that the cheque must be returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account. According to the learned counsel for the petitioner, the ground on which the cheque has been returned does not fall within the parameters specified under Section 138 of Negotiable Instruments Act.

3.The learned counsel for the petitioner would further submit that both in the statutory notice as well as in the complaint, the respondent has taken a ground as if, the cheque was returned only due to the reason that there was no sufficient bank balance in the account.



4.This Court has carefully considered the submissions made by the learned counsel for the petitioner. The respondent has raised a ground both in the statutory notice as well in the complaint, that the petitioner did not have sufficient funds in his account and has intentionally issued a cheque by giving an incomplete account number. The ground that has been raised by the respondent has to be decided before the court below adducing sufficient evidence. The petitioner in this case, in spite of receipt of the statutory notice has not chosen to give any reply to the respondent. If ultimately the respondent is able to prove before the court below that the petitioner did not have sufficient funds in his account on the day when the cheque was deposited, the endorsement made in the memo by the bank will become irrelevant. Therefore, the availability of sufficient funds in the bank is a factual issue which can be gone into only during the course of trial. It is open to the petitioner to raise all the grounds before the court below and the court below shall consider the same on its own merits and in accordance with law.

5.This Court in exercise its jurisdiction under Section 482 of Criminal Procedure Code cannot interfere with the proceedings of the court below at this stage.

6.The learned counsel for the petitioner would submit that the petitioner is aged more than 60 years and his presence may be dispensed with.

7.The presence of the petitioner is dispensed with before the court below and he shall be represented by an Advocate. The petitioner shall be present before the court at the time of questioning under Section 313 Cr.P.C and at the time of passing of the judgment. The petitioner shall be represented by a counsel and the counsel representing the petitioner shall examine the witnesses on the same day when they are examined in Chief.

8.In the result, this Criminal Original Petition is dismissed and the court below is directed to complete the proceedings within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-III)

To

<https://hcservices.ecourts.gov.in/hcservices/>

The Judicial Magistrate No. I,
Kuzhithurai.



COPY TO

The Section Officer,
Criminal Section (Records)
Madurai Bench of Madras High Court,
Madurai. 2 COPIES

- 1 CC TO Mr.C.K.M.APPAJI , ADVOCATE IN SR No.91462.
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- DAS
- DS RSK SAR3 12 12 2018 3P 5C

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