



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD).No.17741 of 2016

and

Crl.M.P.(MD)No.8841 of 2016 & 63 of 2017

C.Manoj Kumar

... Petitioner/ Accused

Vs.

A.Vimala Johnsy

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Cr.P.C., to call for the records and to quash the complaint in S.T.C.No.160 of 2014 on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level No. II), Nagercoil.

For Petitioner	:Mr.V.Dhana Aravindha Balaji for M/s.Dhana Law Associates
For Respondent	:Mr.P.Ganapathi Subramanian

O R D E R

This petition has been filed seeking to quash the proceedings in S.T.C.No.160 of 2014 on the file of the learned Judicial Magistrate Fast Track Court (Magisterial Level No. II), Nagercoil.

2.The learned counsel for the petitioner would submit that the entire complaint is not maintainable, in view of the fact that the actual liability that is claimed by the respondent and the cheque that was actually presented and dishonored are completely different. The learned counsel brought to the notice of this Court, the statutory notice and the complaint that was filed before the Court below. It is clear from the averments made therein that the petitioner owe a sum of Rs.5,00,000/- (Rupees Five Lakhs only) to the respondent by way of an advance received through a sale agreement. According to the respondent, the petitioner agreed to pay a sum of Rs.6,00,000/- (Rupees Six Lakhs only) and two cheques each for a sum of Rs.3,00,000/- (Rupees Three Lakhs only) were given by the petitioner and the respondent has further pleaded that the petitioner has repaid a sum of Rs.2,00,000/- (Rupees Two Lakhs only) out of the total amount of Rs.6,00,000/- and there was a balance amount due and payable of a sum of Rs.4,00,000/-. This averment has been specifically made both in the statutory notice as well as in the complaint. Further, scrupulously the respondent has chosen to deposit Rs.2,00,000/- out of the amount of Rs.6,00,000/- (Rs.3 Lakhs each).



3. For an exceeding liability of Rs.4,00,000/- (Rupees Four Lakhs only), the respondent could not have deposited cheques amounting to a sum of Rs.6,00,000/-. The Court below while taking cognizance of the complaint has totally lost sight of all these important factors. The condition precedent for initiating proceedings under Section 138 of the Negotiable Instruments Act, is that the cheque in question must have been given towards payment of a money for the payment of an amount of money for the discharge in whole or in part of any debt or any other liability. Therefore, it is clear that the cheque in question should represent either the whole of the debt or the part of the debt or liability. In this case, the cheque in question is for a sum of Rs.6,00,000/- and the actual liability is only for a sum of Rs.4,00,000/-.

4. In the considered view of this Court, the entire proceedings therefore, has become vitiated and the Court below even without applying its mind with regard to this crucial aspect, has taken cognizance of the complaint. The criminal complaint is filed by the respondent under Section 138 of the Negotiable Instruments Act does not satisfy the essential condition precedent to be fulfilled with regard to the liability.

5. In view of the above, the proceedings in S.T.C.No.160 of 2014 on the file of the learned Judicial Magistrate Fast Track Court (Magisterial Level No. II), Nagercoil, is hereby quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The Judicial Magistrate,
Fast Track Court
(Magisterial Level No. II),
Nagercoil.
2. The Section Officer,
Criminal Section, (2 Copies)
Madurai Bench of Madras High Court,
Madurai.

Ls

MK/KK/PM/SAR 3/28.12.2018/2P/4C