



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.10.2018  
CORAM

WEB COPY

**THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH**

**Crl.O.P.(MD)No.20364 of 2016**  
**and**  
**Crl.M.P.(MD)No.10303 of 2016**

N.Mohan ... Petitioner / Accused  
Vs.  
P.Suresh ... Respondent / Complainant

**Prayer:** Criminal Original Petition filed under Section 482 Cr.P.C., praying to quash the private complaint in C.C.No.356 of 2016 on the file of the Judicial Magistrate Court No.I (Fast Track Court) Karur.

For Petitioner : Mr.V.Singan

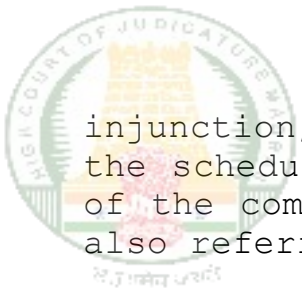
**ORDER**

This Criminal Original Petition has been filed, seeking to quash the proceedings in C.C.No.356 of 2016, pending on the file of the Judicial Magistrate Court No.I, Fast Tract Court, Karur.

2.The learned counsel appearing for the petitioner would submit that even on reading of the complaint, it is clear that the respondent refers to a borrowal, which happened in the year 2009. Subsequently, the respondent has deposited the cheque in the year 2014. Therefore, according to the learned counsel appearing for the petitioner, when the cheque was deposited, there was no existing debt or liability on that date, since the alleged loan itself has become time barred.

3.The learned counsel appearing for the petitioner would further submit that the respondent refers to an agreement on 04.02.2014. Even though the respondent refers to the said agreement, the respondent does not even state as to what was the amount that was agreed to be paid by the petitioner to the respondent. Therefore, except for a bare statement to the effect that there was an agreement on the part of the petitioner to pay an amount, there is nothing to indicate as to what was the amount that was agreed to be paid by the petitioner to the respondent.

4.The learned counsel appearing for the petitioner further brought to the notice of this Court the suit that was filed by the petitioner in O.S.No.1255 of 2014, on the file of the District Munsif Court, Trichirappalli, against the respondent for mandatory



injunction, directing the respondent to return the cheques. In the schedule of property, the cheque, which is the subject matter of the complaint under Section 138 Negotiable Instruments Act, is also referred (Cheque No.393867).

5. According to the learned counsel appearing for the petitioner, after the summons was issued in the suit, the respondent has in a hasty manner proceeded to file a complaint under Section 138 Negotiable Instruments Act against the petitioner.

6. The learned counsel appearing for the petitioner would submit that the action on the part of the respondent is clearly an abuse of process of Court.

7. The respondent has been served in this case and he is neither present in person nor represented by the counsel. Even today, the name of the respondent has been printed in the cause list and there is no representation for the respondent.

8. This Court has carefully considered the submissions made by the learned counsel appearing for the petitioner.

9. This Court is of the considered view that debt that is sought to be claimed from the petitioner by the respondent, is a time barred debt. Therefore, the time barred debt can never fall within the requirements of Section 138 of Negotiable Instruments Act, which talks about only an existing debt or a liability. That apart, the respondent has gone ahead and filed this complaint in the year 2014, after coming to know about the suit filed by the petitioner. Therefore, even according to the averments made in the complaint, the respondent is not able to explain as to what happened during the period from 2009 to 2014. The complaint is totally silent on this aspect.

10. In view of the above, this Court is of the considered view that the complaint itself is abuse of process of Court and the same is liable to be quashed by this Court.

11. In the result, the complaint in C.C.No.356 of 2016 on the file of the learned Judicial Magistrate No.I, Fast Track Court, Karur, is hereby quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (WRIT)

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To

1.The Judicial Magistrate No.I  
Fast Tract Court, Karur.

2.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

**Copy to :**

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

Crl.O.P.(MD)No.20364 of 2016

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RAM-PS/RSK/SAR 4/05.12.2018/3P/5C