



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.07.2018

CORAM :

WEB COPY

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

CRL.O.P. (MD) No.8082 of 2011 and
M.P. (MD) No.1 of 2011

P.Bhuvaneshwari

... Petitioner/Sole Accused

Vs.

K.Srinivasan

... Respondent/Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C., to call for the records in S.T.C.No.773 of 2010 on the file of the learned Judicial Magistrate No.II, Trichy and quash the same against the petitioner.

For Petitioner: Mr.T.Senthilkumar

For Respondent: No Appearance.

ORDER

The petitioner is the accused in S.T.C.No.773 of 201 on the file of the learned Judicial Magistrate No.II, Thiruchirapalli. To quash the same, this Criminal Original petition has been filed.

2. Though the complainant has been served and his name has also been printed in the cause list, he has not chosen to appear either in person or through his counsel.

3. The learned counsel appearing for the petitioner submitted that even as per the complaint averments, the accused had agreed to purchase the complainant's land and towards payment of earnest money, she issued the cheque in question for a sum of Rs.5,00,000/-. The said cheque was presented for collection and on being dishonoured, the complainant had issued statutory notice. The notice was returned with an endorsement "Not Claimed. Based on the same, the impugned complaint came to be filed.

4. According to the petitioner's counsel, even the complaint does not disclose that there was any consideration. **Section 43 of the Negotiable Instruments Act** states that a negotiable instrument made or drawn without consideration or for a consideration which



fails, creates no obligation of payment between the parties to the transaction.

5. In the present case, no doubt there was a consideration. Going by the averments made in the complaint, the consideration has apparently failed. The complainant has not averred anywhere that he had fulfilled any of the obligations cast on him as per the oral agreement. The complaint would only read that as a part of the so called oral agreement, the accused issued the cheque in question. But it is not stated anywhere that what did he discharge in terms of the very same oral agreement. In this case the accused had issued a cheque obviously. It was without consideration as the transaction itself failed. There was no obligation to pay on the part of the petitioner herein.

6. **Section 138 of Negotiable Instruments Act** would be attracted only if there was an enforceable debt or liability. Since the consideration has failed, there is no enforceable liability. Looked at from any angle, no offence has been made out against the petitioner. The Court below ought not to have taken the impugned complaint on file. Hence, the proceedings in S.T.C.No.773 of 2010 on the file of the learned Judicial Magistrate No.II, Trichy, stand quashed.

7. The Criminal Original petition stands allowed, accordingly. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS-III)

To

1. The Judicial Magistrate No.II,
Trichy.

2. The Chief Judicial Magistrate, Trichy.

+ 1 CC TO MR.T.SENTHILKUMAR, ADVOCATE IN SR NO.73649

PMU

TE/PM/SAR-3 : 19/11/2018 : 2P/4C

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