



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.01.2018

Delivered on : 10.01.2018

WEB COPY

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THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P.(MD)No.6306 of 2013

and

M.P.(MD)Nos.2 and 3 of 2013

Christopher ... Petitioner/Accused

Vs.

P.Sathyaseelan ... Respondent/Complainant

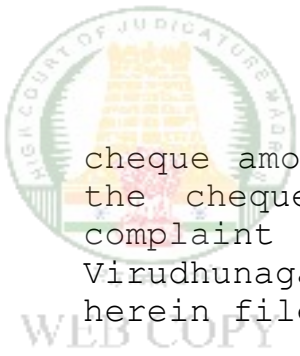
PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in connection with the proceedings in S.T.C.No.329 of 2010 on the file of the Judicial Magistrate, Rajapalayam, Virudhunagar District and quash the same.

For Petitioner : Mr.S.Palani Velayutham

ORDER

The petitioner is the sole accused in S.T.C.No.329 of 2010 on the file of the Judicial Magistrate Court, Rajapalayam, Virudhunagar District. The respondent herein filed the abovesaid case under Section 138 r/w. Section 142 of the Negotiable Instruments Act, 1881. Now, this petition has been filed to call for the records of the abovesaid case and quash the same.

2.According to the petitioner, he issued a cheque bearing No.258331, for a sum of Rs.50,00,000/- drawn on ICICI Bank, Alwar Thirunagar Branch, Chennai, in favour of one K.P.Vellaichamy. Subsequently, the said Vellaichamy made over the same to the respondent herein on 28.04.2010, by stating that the said Vellaichamy received the said sum from the respondent with subsequent interest at the rate of 24% and afterwards, on 21.08.2010, the said cheque was presented to his Banker, viz., Karur Vysa Bank, Rajapalayam, for collection, but, it was not honoured by the petitioner herein and hence, it was returned with an endorsement, 'funds are insufficient'. After returning of the cheque, the respondent herein issued a notice to the petitioner on 15.09.2010, in which, he requested the petitioner for paying the



cheque amount. Even after the same, the respondent was not paid the cheque amount to the petitioner. Hence, he preferred a complaint before the learned Judicial Magistrate, Rajapalayam, Virudhunagar District. Aggrieved over the same, the petitioner herein filed this petition before this Court.

3.The only contention raised by the petitioner is that since the impugned cheque was issued in favour of one K.P.Vellaichamy, filing of the complaint by the respondent is not maintainable under the provisions of the Negotiable Instruments Act, 1881.

4.On the other hand, the contention of the respondent is that the respondent has filed complaint in the capacity of holder in due course. So, nothing wrong in presenting the complaint by the respondent.

5.So the only issue to be decided by this Court is as to whether the respondent is the holder in due course or not.

6.Section 9 of the Negotiable Instruments Act, 1881, defines the holder in due course, as follows:

''9.''Holder-in-due-course''.- ''Holder-in-due-course'' means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or endorsee thereof, if payable to order, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.''

7.Accordingly, the respondent must prove that he is the holder of impugned cheque by means of consideration. If this issue is proved by the respondent, automatically, he is entitled for filing the complaint. So, in this case, the petitioner himself admitted in Page No.2 at Paragraph No.2 as follows:

''2. Subsequently the said Vellaichamy made over the same to him on 28.04.2010 by stating that the said Vellaichamy received the said sum from the respondent herein with subsequent interest at the rate of 24%.''

8.According to the case of the petitioner, the respondent herein has received the cheque only by consideration. So, now, in contra to the above version, the petitioner contended that the respondent is not entitled to file a complaint under Section 138 of the Negotiable Instruments Act, 1881. Accordingly, this Court came to the conclusion that the petition is not having any merit. If the petitioner is having valid ground, it should be appreciated



only by means of evidence and other materials to be placed during the time of trial.

9. In the above circumstances, the relief asked by the petitioner is unsustainable. However, since the case is filed in the year 2010, this Court feels that it would be appropriate to give some directions to the learned Judicial Magistrate, Rajapalayam, Virudhunagar District, to dispose the case within a specific period.

10. Accordingly, this Criminal Original Petition is dismissed with a direction to the learned Judicial Magistrate, Rajapalayam, Virudhunagar District, to dispose S.T.C.No.329 of 2010, within a period of four months from the date of receiving a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate,
Rajapalayam,
Virudhunagar District.

+ 1 cc TO Mr.S.Palani Velayutham , Advocate in SR No. 41912

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AE/MR/SAR4/22.01.2018/3P/3C

CrI.O.P. (MD) No.6306 of 2013
10.01.2018