

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.14141 of 2013
and
M.P.No.1 & 2 of 2013

R.Radhakrishnan ... Petitioner/Accused

Vs.

M.sugumar ... Respondent/Complainant

PRAYER:

Criminal Original Petition is filed under Section 482 Cr.P.C. read with 407 Cr.P.C., to transfer the above S.T.C.No.137 of 2012 on the file of the Judicial Magistrate (FTC), Tiruchengode, Namakkal District to any other Court either in Gingee or Judicial Magistrate Court, Villupuram.

For Petitioner : Mr.C.Prakasam

For Respondent : No appearance

O R D E R

Criminal Original Petition filed to transfer the above S.T.C.No.137 of 2012 on the file of the Judicial Magistrate (FTC), Tiruchengode, Namakkal District to any other Court either in Gingee or Judicial Magistrate Court, Villupuram.

2.The petitioner is the accused in S.T.C.No.137 of 2012 pending trial on the file of the Judicial Magistrate (FTC), Tiruchengode, Namakkal District filed by the respondent/complainant for the offence under Section 138 of the Negotiable Instruments Act.

3.The case is that the petitioner had borrowed a sum of Rs.6,00,000/- (Rupees six lakh only) from the respondent for his urgent expenses and had signed and issued a post dated cheque bearing No.087909, dated 28.12.2011 for a sum of Rs.6,00,000/- drawn on Centurion Bank Ltd., Pondicherry Branch to discharge the above said loan.

4.The respondent had presented the above cheque for collection through his bank namely Vijaya Bank, Thiruchengode Branch on 02.01.2012 and the above cheque was dishonoured and returned to the respondent on 13.01.2012 for the reason "Refer to drawee", thereafter, statutory notice was issued on 18.01.2012. Though, the petitioner had received the notice on 23.01.2012, the petitioner neither make any payment nor sent reply for the same. Thereafter, the case came to be filed.

5.The contention of the petitioner is that the petitioner had not availed any loan from the respondent and there is no debt as regards to the respondent. The respondent is working a Manager in Bharathi Finance, in which the petitioner had taken a loan of Rs.1.10 lakhs and during the availment of the loan, he had issued four signed blank cheques to the said Bharathi Finance. The above said loan had been repaid and the petitioner had requested the said Bharathi Finance for the return of the cheques. It was stated that they would return back the cheques after getting the same from their safe custody and also informed that the same was entrusted to their Manager, the respondent herein, who was working as Manager in the said Bharathi Finance had misused the said cheque.

6.The respondent had stolen the said four signed blank cheques from the said Bharathi Finance and misused the same and filled up and presented the same in his individual accounts and now he lodged the above said complaint for the alleged offence under Section 138 of the Negotiable Instruments Act. The petitioner do not have any nexus with the respondent herein and also there is no transaction happened between the petitioner and the respondent and the petitioner is not liable to pay the same.

7.Further contention of the petitioner is that the petitioner is suffering from spinal cord protrusion and his health condition is that he cannot stand or walk for a long and he had been advised physiotherapy and bed rest. Further the petitioner is a resident of Gingee Town, Villupuram District. The respondent had filed a case in S.T.C.No.137 of 2012 pending on the file of the Judicial Magistrate (FTC), Tiruchengode, Namakkal District, which is far off place from Gingee Town, Villupuram District. Due to his health condition, he cannot attend the Court and he will be put to irreparable loss and great hardship.

8.Be that as it may, the petitioner's only contention is that the petitioner finding it difficult to attend the proceedings in S.T.C.No.137 of 2012 pending on the file of the Judicial Magistrate (FTC), Tiruchengode, Namakkal District, which is away from Gingee Town, Villupuram District and he is willing to attend the proceedings in the above said S.T.C.No.137

of 2012, if the case is transferred from Tiruchengode to Villupuram.

9.This Court perused the materials. The contention of the petitioner and the factual matters, which could be gone only during the trial. This Court relied upon the decision of the Hon'ble Apex Court of India in the case of Bhaskar Industries Limited Versus Bhiwani Denim & Apparels Ltd. and others reported in 2001 SCC (Cri) 1254 have held that in the cases involving offence under Section 138 of the negotiable Instruments Act, if it appears to the Court that personal attendance may result in enormous hardship and cost to an accused, the Court may dispense with his personal attendance either throughout or at any particular stage of the proceedings, after taking an undertaking from him that he would not dispute his identify as the Court and he would have no objection in taking evidence in his absence. Main concern of the Court is administration of criminal justice and for that purpose the Court proceedings should register progress. However, discretion to dispense with the personal appearance should be exercised in rare cases due to distance or any physical disability or other good reasons, in the interest of justice.

10.Taking into consideration of the petitioner's health condition that he is not able to attend the Court on all hearing dates and in the interest of justice, the petitioner's personal attendance may be dispensed with and the presence of the petitioner may not be insisted, unless and until the Court below feels that his presence is absolutely necessary.

11.With the above observation, this Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

सत्यमेव जयते
Joint Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

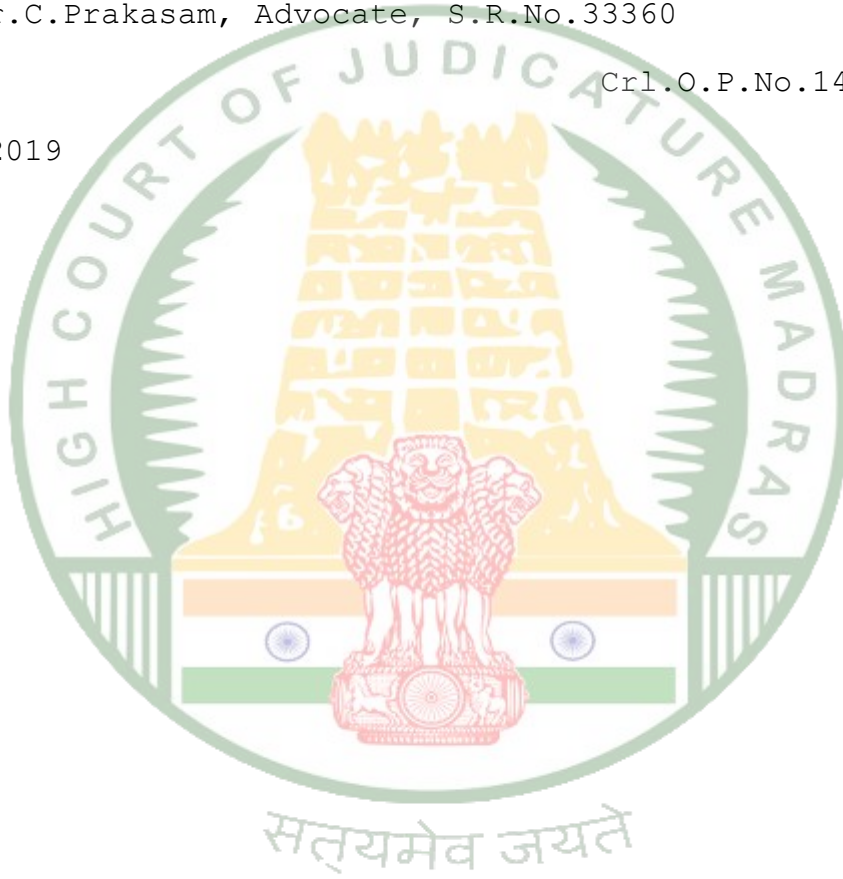
1. The Judicial Magistrate (FTC),
Tiruchengode,
Namakkal District.

2. The Judicial Magistrate,
Villupuram.
3. The Chief Judicial Magistrate,
Namakkal.
4. The Chief Judicial Magistrate,
Villupuram.
5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.Prakasam, Advocate, S.R.No.33360

Crl.O.P.No.14141 of 2013

RV(CO)
CS/26/06/2019



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