

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED : 03.12.2018

JUDGMENT PRONOUNCED : 29.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Crl.O.P.No.23022 of 2011
and M.P.No.1 of 2011

B.A.Naseebuddin ...Petitioner/Accused
Vs.

M/s.Indo Asian Finance Limited,
Rep. by its Marketing Executive
Mr.Ravi Narayanan
15, New Giri Street,
T.Nagar,
Chennai - 600 017. ...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the proceedings pending in C.C.No.14116 of 2009 on the file of XVII Metropolitan Magistrate Court, Saidapet, Chennai - 600 015 and quash the same.

For Petitioner : M/s.K.Parameshwari

For Respondent : No appearance

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.14116 of 2009 on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai - 600 015. The said proceedings in C.C.No.14116 of 2009 was filed by the respondent herein as against the petitioner/accused for the offences punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. When the matter is taken up for hearing today, none appeared on behalf of the respondent. Learned Counsel for the petitioner is present and ready. Even in the earlier occasions,

when the matter was posted for hearing, none appeared on behalf the respondent, despite the matter was passed over and taken up again. Since the present criminal original petition is of the year 2011, this Court proceeds with hearing the learned counsel for the petitioner.

3. According to the complainant, the petitioner approached him for financial assistance under Hire Purchase Agreement to purchase A.L.Open Model 2005 vehicles and towards discharge of part liability, the petitioner had issued a cheque on 15.04.2009 for a sum of Rs.7,89,750/- (Rupees Seven Lakh Eighty Nine Thousand Seven Hundred and Fifty only). When the said cheque was presented for collection, it was returned for the reason 'insufficient funds' by cheque return memo dated 17.04.2009. The respondent/complainant after issuing the statutory notice on 05.05.2009, filed a complaint in C.C.No.14116 of 2009 on 29.06.2009.

4. According to the petitioner, he availed vehicle loan from M/s. Shriram Transport Finance Company Limited through the respondent to purchase various Tipper Taurus Vehicle. The 25% of the amount i.e., Rs.3,00,000/- was invested by the petitioner and the remaining 75% of the amount was taken as loan. At the time of availing the loan, the respondent had obtained various documents including this cheque as blank cheque. For default of the loan amount, the respondent had taken away the vehicle in the month of January 2010 itself. After taking the vehicle, the complaint was file through the blank cheque given to them.

5. The learned counsel for the petitioner had raised a legal ground that the statutory notice as contemplated under Section 138 of the Negotiable Instruments Act, was not taken and the complaint was also filed after the statutory period.

6. The holder of the cheque shall issue a notice to the drawer within a period of 15 days after receiving the intimation from the bank. In this case, the cheque was issued on 15.04.2009 and presented for collection on the same day. The cheque was returned on 17.04.2009 for the reason 'insufficient funds'. But the legal notice dated 04.05.2009 was sent on 05.05.2009 i.e., after 15 days the statutory notice was issued. Similary, statutory notice was returned on 19.05.2009 and the complainant was filed only on 26.09.2009. The complaint was also not filed within 1 month as prescribed under the said Act. The statutory notice as contemplated under the Act and the time prescribed for filing the complaint is not complied with by the complainant. On this ground alone, this complaint is liable to be quashed.

7. In view of the above, this criminal original petition is allowed and the proceedings in C.C.No.14116 of 2009 on the file of the XVII Metropolitan Magistrate Court, Saidapet, Chennai - 600 015 pending against the petitioner is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

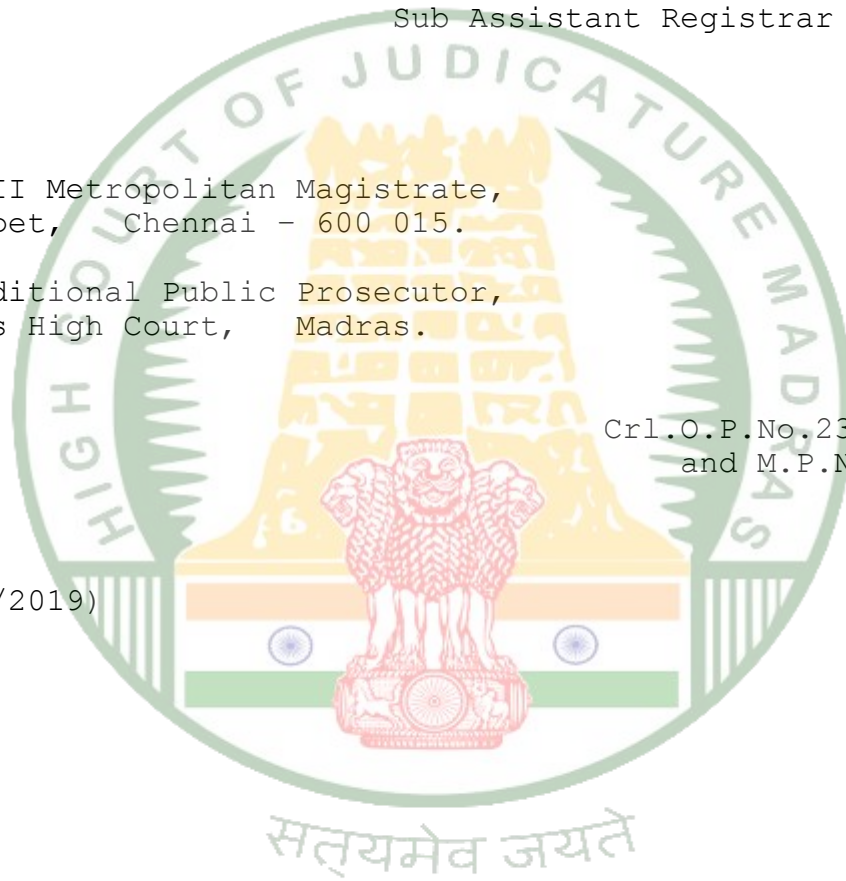
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To

1. The XVII Metropolitan Magistrate,
Saidapet, Chennai - 600 015.
2. The Additional Public Prosecutor,
Madras High Court, Madras.

Crl.O.P.No.23022 of 2011
and M.P.No.1 of 2011

SAI(CO)
GMY(06/03/2019)



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