

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.01.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.OP.No.186 of 2013
and

MP.Nos.1 and 2 of 2013

V.Loganathan

.... Petitioner/Accused

Vs.

M/s.Jaya Priya Chit Funds Pvt Ltd.,
No.30, Main Road,Neyveli-2
Rep.by its Power of Attorney Agent,
S.Martinluthur.

.... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records relating to the STC No.219 of 2012 on the file of the learned Judicial Magistrate, Neyveli and to quash the same.

For Petitioner : Mr.Santhosh Kumar

for AL.Ganthimathi

For Respondent : M/s. S.Sithirai Anandam

ORDER

This petition has been filed by the accused to quash the proceedings against him in S.T.C.No.219 of 2012 on the file of the District Munsif-cum-Judicial Magistrate, Neyveli.

2. The respondent herein has filed a private complaint stating that the petitioner had issued a cheque for Rs.5,00,000/- dated 03.02.2012 to discharge the debt which became due in the chit transaction. The said cheque was presented on 03.02.2012 in the Lakshmi Vilas Bank, Mandarakuppam and the said cheque was returned on 06.02.2012 for the reason "Funds Insufficient". He has again presented the cheque on 30.04.2012 and it was returned on 05.05.2012 for the same reason and hence he has issued a notice on 23.05.2012. Though the petitioner herein, has received the notice on 28.05.2012, he did not come forward to pay the amount. On the contrary, he

has sent a reply notice dated 15.06.2018 with false allegations and hence he prayed to punish the petitioner herein under Section 138 of the Negotiable Instruments Act.

3. Based on the said complaint, the learned District Munsif-cum- Judicial Magistrate, Neyveli, has taken the case on file in S.T.C.No.219 of 2012 and issued summons to the petitioner herein. On receipt of summons, the petitioner herein has filed the present petition under Section 482 of Cr.P.C to quash the proceedings against him in S.T.C.No.219 of 2012 on the file of the learned District Munsif-cum-Judicial Magistrate, Neyveli.

4. Heard Mr.Santhosh Kumar, the learned counsel for the petitioner/accused and M/s.S.Sithirai Anandan, learned counsel for the respondent/complainant.

5. The learned counsel for the petitioner has submitted that the petitioner had issued a cheque only in Chennai and the petitioner also residing only in Chennai and that being so, the Court at Chennai alone will have jurisdiction to entertain the case, but the respondent has filed the above case before the District Munsif-cum-Judicial Magistrate, Neyveli and that Court is not having jurisdiction to try the above case. He further submitted that the notice and the reply notice would show that there was no legally recoverable debt and hence the complaint is not maintainable on that ground also and therefore, he prayed to quash the proceedings against the petitioner herein.

6. Per Contra, the learned counsel for the respondent/complainant has submitted that the respondent has presented the cheque for collection in the Lakshmi Vilas Bank, Mandarakuppam which comes within the jurisdiction of the District Munsif-Cum-Judicial Magistrate, Neyveli. He further submitted that the Section 142 of the Negotiable Instruments Act has been amended in the year 2015 and Sub-Section (2) has been incorporated in the aforesaid Section. He further submitted that as per Sub-Section (2) of Section 142 of the Negotiable Instruments Act, the Court within whose local Jurisdiction, the branch of the bank where the payee or holder in due course as the case may be maintains the account, is situated also will have jurisdiction to entertain the complaint under Section 138 of the Negotiable Instruments Act and hence the complaint which has been filed before the District Munisif-cum-Judicial Magistrate Court, Neyveli, is maintainable. He further submitted that as per Section 139 of the Negotiable Instruments Act, it shall be presumed, unless the contrary is proved that the holder of a cheque received the cheque, for the discharge, in whole or in part, of any debt or other liability and hence the burden is up on the petitioner/accused to rebut the aforesaid presumption

and therefore, the question as to whether there is a legally enforceable debt or not cannot be decided in the petition which is filed under Section 482 of Cr.P.C.

7. Section 142 of the Negotiable Instruments Act, 1881 has been amended and Sub-Section (2) has been incorporated which reads thus:

" (2) The offence under Section 138 shall be inquired into and tried only by a Court within whose local jurisdiction,-

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation- For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account".

8. A plain reading of the aforesaid provision would show that the Court within local jurisdiction, the branch of the bank where the payee or holder in due course as the case may be maintains the account, is situated will have jurisdiction to try the offence which is punishable under Section 138 of the Negotiable Instruments Act. In this case, admittedly, the respondent herein, had presented the cheque in the bank which is situated within the jurisdiction of the District-cum-Judicial Magistrate, Neyveli and therefore that court is having jurisdiction to try the above case.

9. In so far as liability is concerned, the presumption is there under Section 139 of the Negotiable Instruments Act in favour of the respondent/defacto complainant. It is for the accused to rebut the said presumption that the cheque was issued not for discharge of legally enforceable debt. The said question cannot be decided in the petition which is filed under Section 482 of Cr.P.C.. Therefore, this Court is of the view that this petition is liable to be dismissed.

10. In the result, this Criminal Original petition is dismissed. It is open to the petitioner/accused to contest the case before the Trial Court. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vv
To

1. The District Munsif-cum- Judicial Magistrate,
Neyveli.

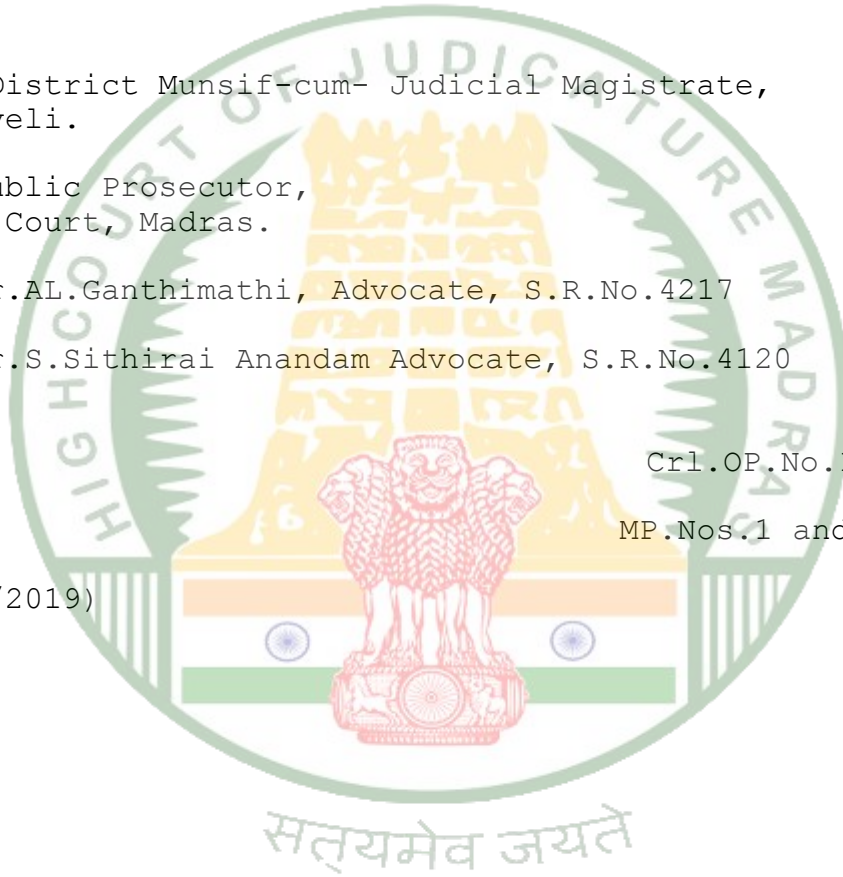
2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.AL.Ganthimathi, Advocate, S.R.No.4217

+1cc to Mr.S.Sithirai Anandam Advocate, S.R.No.4120

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RSI (CO)
GSP (20/02/2019)



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