

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2019

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

CRL.OP NO.25359 OF 2016

AND

CRL.M.P.NO.12303 OF 2016

Ravi Prabhakar

.. Petitioner

Vs.

D.Devi

.. Respondent

PRAYER:-

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the C.C.No.280 of 2016 on the file of the IX Metropolitan Magistrate, Saidapet by the respondent herein and quash the same.

For Petitioner : Mr.S.Jayasellan

For Respondent : Mr.S.Manivasagam

O R D E R

This Criminal Original Petition is filed to call for the records pertaining to the C.C.No.280 of 2016 on the file of the learned IX Metropolitan Magistrate, Saidapet by the respondent herein and quash the same.

2. The learned counsel for the petitioner has challenged the complaint made under Sections 138 & 142 of Negotiable Instrument Act, on the ground that the firm has not been made a party and that there are some discrepancies with regard to the stand taken by the complainant in a private complaint. In support of the contention of the learned counsel for the petitioner relied upon the decision of this Court reported in CDJ 2018 MHC 825 (J.Jeyakumar Vs. R.Selvaraj).

3. Insofar as the powers of this Court under Section 482 of Cr.P.C is concerned, the scope for interference in a private complaint is very limited, in the sense that the averments made in the complaint before the trial Court and the documents relied

thereon alone, are to be looked into. Furthermore, in case such averments disclose that there are legally enforceable debt, such an interference can be made. In the instant case, the averments in the complaint clearly reveals that the dispute between the complainant and the petitioner herein arose out of the Sale cum Construction Agreement dated 23.07.2012, wherein, the complainant herein had agreed to purchase a flat together with an undivided share for a sum of Rs.32,00,400/- and paid an advance sum of Rs.10,00,000/-. Owing to subsequent dispute between the parties, the complainant had demanded the return of the advance amount with compensation of Rs.18,50,000/-, for which the impugned cheque was given, which includes the compensation, with a promise that the cheque will be honoured.

4. Subsequently when the complainant has presented the cheque, it was returned for "funds insufficient". Thereafter, proceedings was initiated under Sections 138 & 142 of the Negotiable Instruments Act. Insofar as, the grounds raised by the petitioner is concerned, the firm namely Dhanishka, in which the petitioner herein claims to do Flats Promotion business, is not the appropriate authority to issue the cheque. The cause of action in the present complaint arose from the stage when the petitioner herein had issued the cheque of Rs.18,50,000/- in favour of the complainant and at this juncture, the firm namely Dhanishka had absolutely no role to play.

5. Insofar as the stands taken by the learned counsel for the petitioner that the proceedings before the District Consumer Disputes Redressal Forum at Chennai in C.C.No.34 of 2016 is concerned, this Court may not be justified in looking into such proceedings, which is not on a part of the present complaint. As stated earlier, the scope of interference by this Court is very limited. If at all, the petitioner is of the view that the averments in the proceedings before the District Consumer Disputes Redressal Forum at Chennai to his favour, the only remedy available to them would be to establish the same during the course of trial and such grounds may not entitle him to seek for quashing the proceedings under Section 482 of Cr.P.C. The decision relied by the learned counsel for the petitioner in the case of J.Jeyakumar cited (supra) has no relevancy in the present case in view of the fact that the cheque was issued only by an individual and not by the firm.

6. In the light of the above observations, I do not find any reason to interfere with the prayer sought for in the present Petition. Accordingly, the Criminal Original Petition is dismissed, with liberty to the petitioner to raise all the

grounds before the trial Court during the course of trial. The trial Court shall endeavour to complete the trial as expeditiously as possible. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

vkr

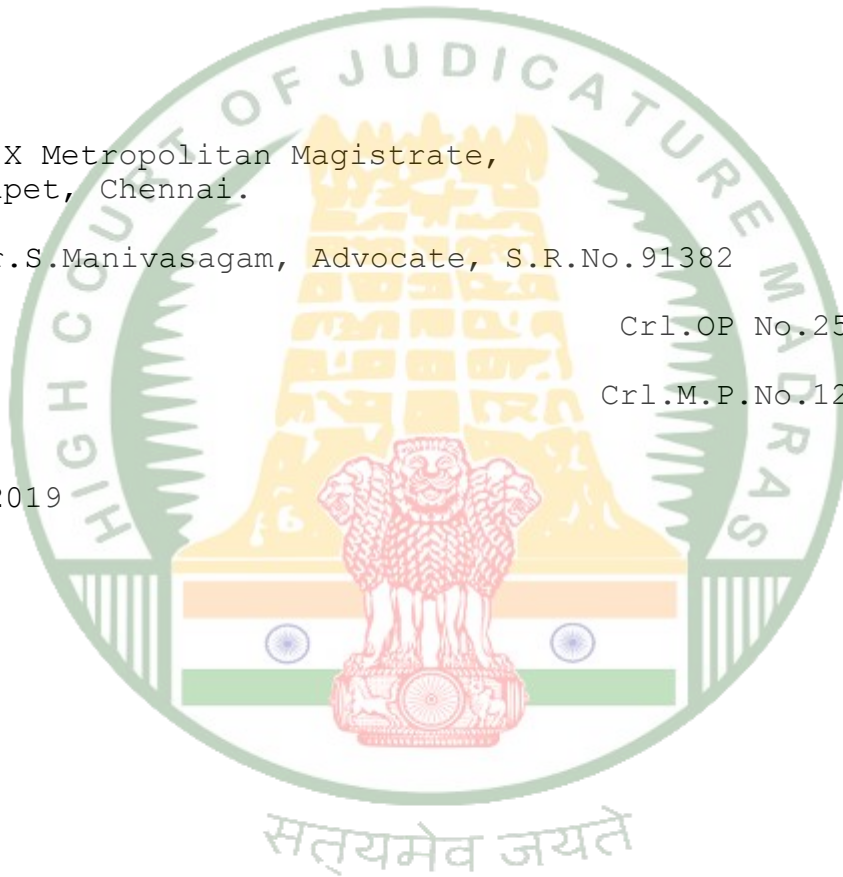
To

1. The IX Metropolitan Magistrate,
Saidapet, Chennai.

+2cc to Mr.S.Manivasagam, Advocate, S.R.No.91382

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and
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EV(CO)
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