

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2019

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.7036 of 2014

and

M.P.Nos.1 & 2 of 2014

V.Manikandaraj

... Petitioner

Vs.

Mr.Suryabaskar,
Proprietor, M/s.Surya Imports and Exports,
Rep. by its Power Agent,
Mr.S.Meenakshi Sundara Pandian,
At 2 G, Sherfi Tower,
No.6, VSM Garden Street,
Ashok Nagar,
Chennai - 600 083.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records in C.C.No.4320 /2014 pending on the file of the learned V Metropolitan Magistrate, Egmore, Chennai and to quash the same.

For Petitioner : Mr.N.Sudharsan

For Respondent : Mr.S.Nagarajan

सत्यमेव जयते
O R D E R

The Criminal Original Petition has been filed to quash the proceedings in C.C.No.4320 of 2014, pending on the file of the learned V Metropolitan Magistrate, Egmore, Chennai.

2.Heard, Mr.N.Sudharsan, learned counsel appearing for the petitioner and Mr.S.Nagarajan, learned counsel appearing for the respondent.

3.The learned counsel for the petitioner submitted that the complainant filed a private complaint against the petitioner for the offence under Section 138 read with 142 of the Negotiable Instruments Act, before the learned V Metropolitan Magistrate

Court, Egmore and the same was taken on file in C.C.No.4320 of 2014.

4.The learned counsel for the petitioner further submitted that the petitioner had borrowed a sum of Rs.27,00,000/- from the respondent and had issued a cheque bearing No.824631 dated 05.07.2010 for the aforesaid amount. The complainant presented the said cheque for encashment in his account viz., Indian Overseas Bank, Koyambedu Branch, but the said cheque was returned memo "Insufficient Funds" on 03.09.2010. Thereafter, the petitioner failed to repay the said loan amount. Hence, the complainant had sent a legal notice dated 29.09.2010, calling upon him to repay the cheque amount and the petitioner had not received the notice and the same was returned with an endorsement "refused". There is no legally enforceable liability and in the said business the cheques were only a theft cheque for the same the petitioner gave a complaint before the Pollachi Town East Police Station and the same was registered in Cr.No.649 of 2010. The dispute arise between the parties using the theft cheque and the provision under Section 138 of the Negotiable Instruments Act will not attract. Hence, the petitioner prayed to quash the proceedings.

5.It is seen that the petitioner borrowed a sum of Rs.27,00,000/- from the respondent dated 20.12.2012 and he had issued a cheque for a sum of Rs.27,00,000/- bearing No.824631 dated 05.07.2010. Thereafter, the complainant presented the said cheque for encashment in his account viz., Indian Overseas Bank, Koyambedu Branch, but the said cheque was returned memo "Insufficient Funds" on 03.09.2010. The averments made in the complaint do not disclose the offence committed by the petitioner.

6.It is also seen that there is no legally enforceable liability and in the said business the cheques were only a theft cheque for the same the petitioner gave a complaint before the Pollachi Town East Police Station and the same was registered in Cr.No.649 of 2010. The dispute arise between the party's using the theft cheque and the provision under section 138 of the Negotiable Instrument Act will not attract. However, in the said complaint it was not mentioned that what purpose the said cheque was given to him, the Cheque No., Date of Presentation, Notice returned date and hence the offence under Section 138 of the Negotiable Instruments Act will not be attracted. The said complaint taken on file is bad in the eye of law. Therefore, the petitioner is not liable to pay any amount to the respondent/complainant.

7.With the above observation, the Criminal Original Petition stands allowed and the proceedings in C.C.No.4320 of 2014, on the file of the learned V Metropolitan Magistrate,

Egmore, Chennai is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

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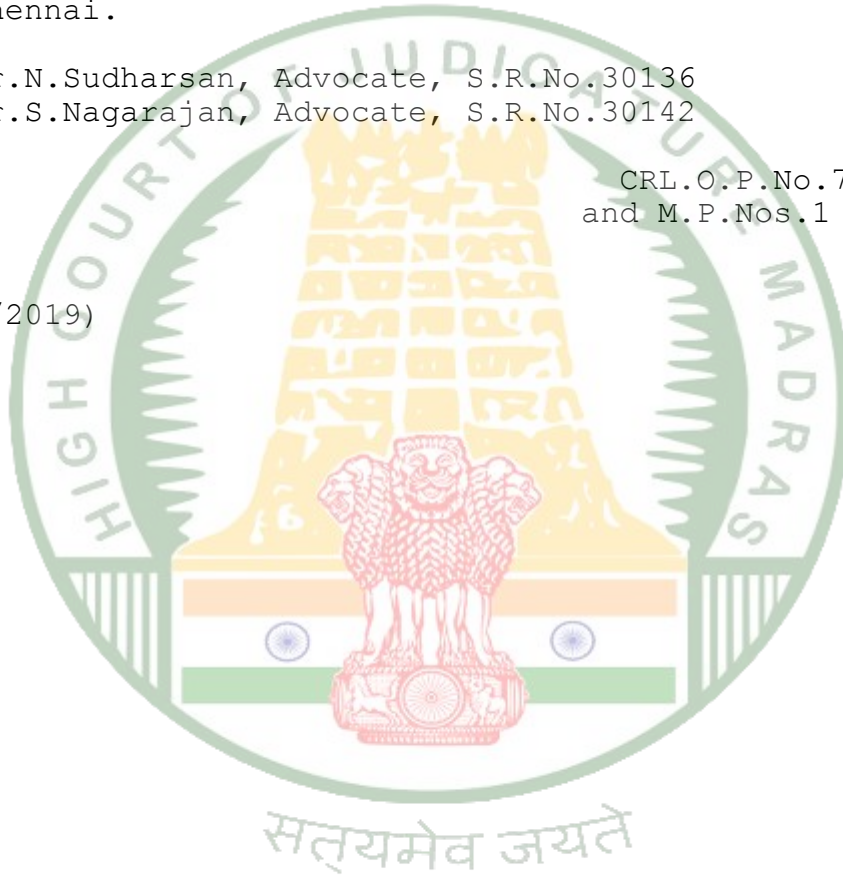
The V Metropolitan Magistrate,
Egmore, Chennai.

+1cc to Mr.N.Sudharsan, Advocate, S.R.No.30136
+1cc to Mr.S.Nagarajan, Advocate, S.R.No.30142

CRL.O.P.No.7036 of 2014
and M.P.Nos.1 & 2 of 2014

PPA (CO)

RRS (09/07/2019)



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