

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.06.2019

CORAM

THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

CrI.O.P.No.2358 of 2014
and
M.P.No.1 of 2014

S.M.Noor Mohamed

.. Petitioner

Vs.

S.N.Jahabar Ali

.. Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to the proceedings instituted under section 138 of the Negotiable Instruments Act, 1881 against him pending in C.C.No.351 of 2009 on the file of the Learned Judicial Magistrate No.II, Mannargudi, Thiruvarur District and quash the proceedings therein.

For Petitioner : Mr.G.Saravanan

For Respondent : M/s.Meenakshi Sundram

O R D E R

This petition has been filed to quash the proceedings initiated by the respondent under Section 138 of the Negotiable Instruments Act.

2. Admittedly in this case, the petitioner is the father, who is now aged about 86 years and the respondent is the son, who must be aged about 57 years at present. The cheque in question is said to have been issued by the petitioner to his son and when the same was deposited, it was dishonoured with an endorsement 'funds insufficient'. Thereafter, the present complaint has been filed and the same has been put to challenge before this Court.

3. The learned counsel for the petitioner submitted that there is not even a whisper in the complaint with regard to the debt or liability towards which the cheque was issued by the petitioner to the respondent. The learned counsel further brought to the notice of this Court the reply notice

given by the petitioner to the respondent wherein he has taken a categorical stand that the respondent had involved in several criminal activities and had taken away certain cheque leaves kept in the house of the petitioner without his knowledge and has misused the same.

4. The learned counsel for the petitioner further submitted that there is no presumption regarding the existence of the debt or liability and the same has to be pleaded and proved. For this purpose, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in KRISHNA JANARDHAN BHAT V DATATRAYA G. HEDGE reported in 2008 1 CTC page 433 and the judgment of the Madurai Bench of this Court in MS.KALAVALLY V. PARTHASARATHY reported in 2009 1 MLJ (Cr1) page 120. The learned counsel also brought to the notice of this Court the latest judgment of the Hon'ble Supreme Court KISHAN RAO V. SHANKARGOUDA reported in 2018 to Madras Weekly Notes Criminal DCC Page 145.

5. The learned counsel appearing on behalf of the respondent submitted that the existence of debt or liability is a matter for trial and the same cannot be considered at this stage in exercise of jurisdiction under Section 482 of Cr.P.C.

6. This Court has carefully considered the submissions made on either side.

7. It has to be borne in mind that the petitioner and the respondent are father and son and the petitioner has also taken a specific stand in his reply notice regarding the criminal antecedents of the respondent. Keeping that in mind, a look into the complaint filed by the respondent does not reveal anything regarding the debt or liability towards which the cheque was executed by the petitioner in favour of the respondent.

8. The above judgments relied upon by the learned counsel for the petitioner makes it is clear that there is no presumption of an existence of the debt or liability under Section 139 of the Negotiable Instruments Act and the same has to be pleaded and proved. The existence of the debt or liability is completely absent in this case and therefore, the complaint does not even satisfy the minimum requirements to constitute an offence under Section 138 of Negotiable Instruments Act.

9. In view of the above, this Court is of the considered view that the proceedings is an abuse of process of Court and the same requires interference by this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

10. In the result, the proceedings in C.C.No.351 of 2009 on the file of the Judicial Magistrate II, Mannargudi, Thiruvarur District, is hereby quashed and the Criminal Original Petition is allowed accordingly. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS)

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Sub Assistant Registrar

kal/ebsi
To

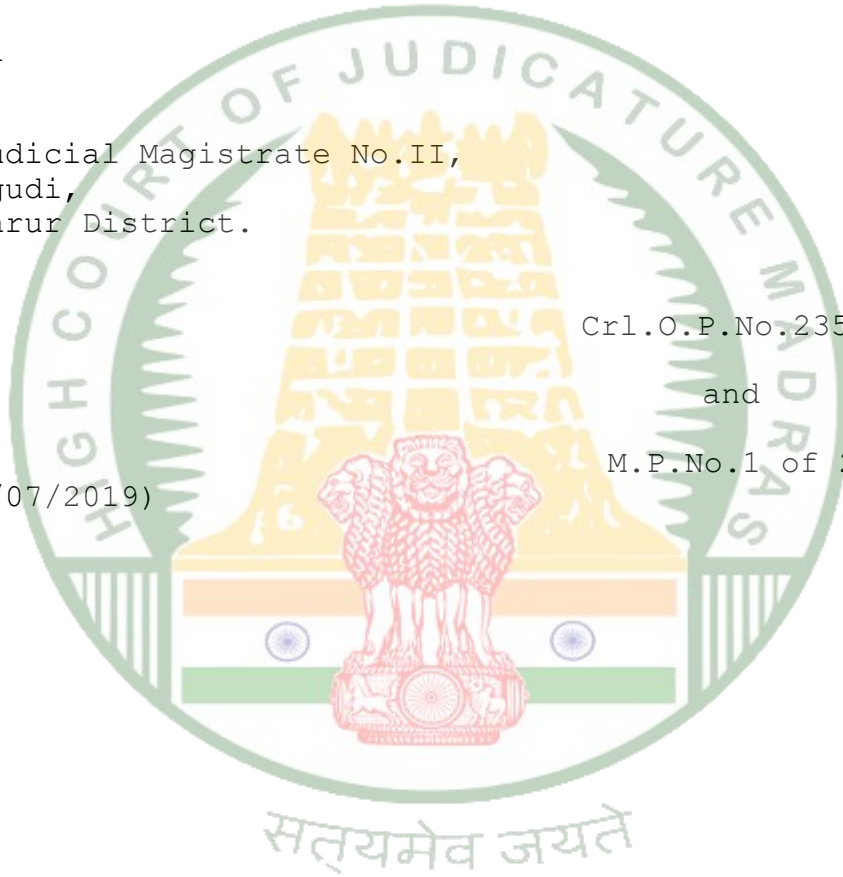
The Judicial Magistrate No.II,
Mannargudi,
Thiruvarur District.

CrI.O.P.No.2358 of 2014

and

M.P.No.1 of 2014

A.SK(08/07/2019)



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