



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.09.2019**

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P. (MD)No.4486 of 2018
and
Crl.M.P (MD)No.2193 of 2018

T.P.S.Senthil Kumar ...Petitioner/Accused

Vs.

Manikanda Prabhu ...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records in connection with the case in C.C.No.189 of 2016 on the file of the learned Judicial Magistrate No.2, Dindigul and quash the same.

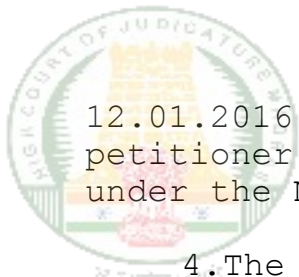
For Petitioner : Mr.N.Sathish Babu

O R D E R

This petition has been filed to quash the proceedings initiated under Section 138 of Negotiable Instruments Act in C.C.No.189 of 2016 pending on the file of the learned Judicial Magistrate No.II, Dindigul.

2. The learned counsel for the petitioner would submit that the statutory notice is not issued properly to the petitioners by the respondent. There is absolutely no proof for valid service before instituting the present complaint. She further submitted that the entire complaint is false one and it is a fake and false allegation as against petitioner. Further she submitted that the entire burden on the *de facto* complainant is to prove the case as contemplated by the defacto complainant. Therefore, she prays to quash the entire proceedings.

3. It is seen that the respondent initiated proceedings under the Negotiable Instruments Act, alleging that the petitioner had borrowed money at several occasions. To repay the same, the petitioner has issued a cheque. It was presented for collection and the same was returned for the reasons that "insufficient funds". Therefore, the respondent had issued a statutory notice on



12.01.2016 and the same was returned ''unclaimed'' by the petitioner. Thereafter, the respondent initiated the proceedings under the Negotiable Instruments Act.

4.The letter issued by the Post Master, Dindigul is extracted here under:

'' In continuation of our letter regarding the Complaint No.624001-01752, it is to inform you that the complaint of Others of Registered Letters with Acknowledgement with Transaction No.RT82399 3859IN on 12.01.2016 of dindigul h.o-624001 is settled on 02.02.2016 with the following information that 'The article was UNCLAIMED on 21.01.16.'''

5. Therefore, it is very clear that the petitioner returned the notice as ''unclaimed''. Therefore, it amounts to sufficient service of the notice. Further, the other ground raised by the petitioner cannot be considered by this Court since it is a disputed questions of facts.

6. Therefore, this Criminal Original Petition is dismissed as devoid of merits. However, the petitioner is at liberty to raise all the grounds before the trial Court. However, considering the fact that the trial is pending from the year 2016, the learned Judicial Magistrate No.II, Dindigul, is directed to proceed with the trial and complete the same within a period of three months from the date of receipt of a copy of this order.

7. At this juncture, the learned Counsel for the petitioner submitted that the presence of the petitioner before the Trial Court may be dispensed with.

8. Accepting the said submission, the personal appearance of the petitioner is dispensed with and he shall be represented by a counsel after filing appropriate application. The petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(AD-I)

/TRUE COPY/

Sub Assistant Registrar

vsd



To

The Judicial Magistrate No.2,
Dindigul.

+1 CC to M/s.A.CHANDRAKUMAR, Advocate (SR-89658[F] dated 26/09/2019

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and

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JM/22.10.2019/3P/3C