



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.11.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD)No.10858 of 2015

and

M.P. (MD)No.1 of 2015

WEB COPY

S.Kamarajan

... Petitioner/Accused

Vs

Parthasarathy

... Respondent/Complainant

**Prayer:** Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to C.C.No.218 of 2014, on the file of the Judicial Magistrate, (Fast Track Court), Pattukottai and quash the same.

For Petitioner

: Mr.D.R.Murugesan

For Respondent

: No appearance

**O R D E R**

Heard the learned counsel appearing for the petitioner. No appearance for the respondent.

2.The petitioner in facing trial in C.C.No.218 of 2014, on the file of the learned Judicial Magistrate/Fast Track Court, Pattukottai. It is a private complaint arising under Section 138 of Negotiable Instruments Act. The respondent instituted the said private complaint.

3.The learned counsel appearing for the petitioner would submit that the respondent namely., Sri Gokulam Chits & Fiance Company Private Limited is running a chit group and that the petitioner is a subscriber. Even at the time of becoming a member of the chit group, the respondent had obtained signed blank cheques from the petitioner herein. According to the petitioner, the same has been misused for the purpose of launching the impugned complaint.

4.The petitioner's counsel would contend that the respondent will have to necessary move the Chit Registrar for resolving the dispute in question and that it is not open to the respondent to maintain the private complaint. The learned counsel for the petitioner drew my attention to Section 64 of the Chit Funds Act, 1982, which reads as follows:-



**'64. Disputes relating to chit business.-(1)**

Notwithstanding anything contained in any other law for the time being in force, any dispute touching the management of a chit business shall be referred by any of the parties to the dispute, to the Registrar for arbitration if each party thereto is one or the other of the following, namely:-

(a) a foreman, a prized subscriber or a non-prized subscriber, including a defaulting subscriber, past subscriber or a person claiming through a subscriber, or a deceased subscriber to a chit;

(b) a surety of a subscriber, past subscriber, or a deceased subscriber.

*Explanation.*—For the purposes of this sub-section, a dispute touching the management of a chit business shall include—

(i) a claim by or against a foreman for any debt or demand due to him from a subscriber, or due from him to a subscriber, past subscriber or the nominee, heir or legal representative of a deceased subscriber whether such debt or demand is admitted or not;

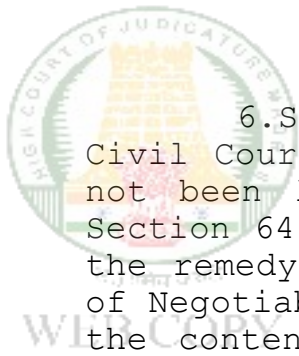
(ii) a claim by a surety for any sum or demand due to him from the principal borrower in respect of a loan by a foreman and recovered from the surety owing to the default of the principal borrower, whether such sum or demand is admitted or not; and

(iii) a refusal or failure by a subscriber, past subscriber or the nominee, heir or legal representative of a deceased subscriber to deliver possession to a foreman of land or any other asset resumed by him for breach of conditions of the assignment.

(2) Where any question arises as to whether any matter referred to for the award of the Registrar is a dispute or not for the purposes of sub-section (1), the same shall be decided by the Registrar whose decision thereon shall be final.

(3) No Civil Court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1).''

5.I am not persuaded by the submission made by the petitioner's counsel. It is true that the said provision contains a statutory mechanism for resolving the dispute that may arise between the chit company and the subscriber to any chit. But then, the remedy open to the parties in terms of Section 64(1) of the said Act will not foreclose give the remedy of the chit company from resorting to Section 138 of Negotiable Instruments Act.



6. Section 64(3) of the Said Act bars the jurisdiction of the Civil Court. But then, the jurisdiction of the Criminal Court has not been likewise ousted. The conferment of civil remedy under Section 64 of the Chit Funds Act, 1982 cannot result in stifling of the remedy available to the drawer of the cheque under Section 138 of Negotiable Instruments Act. In this view of the matter, I reject the contention raised by the petitioner's counsel. The criminal original petition stands dismissed.

7. It is made clear that except this legal issue, all the other defences of the petitioner have been left open. The petitioner's liability has not been adjudicated. Considering the facts and circumstances of the case, the personal appearance of the petitioner is dispensed with before the Court below. However, the Court below will insist on the personal appearance of the petitioner only on three occasions namely, to answer the charge, for examination under Section 313 of Cr.P.C., and at the time of pronouncing Judgment. On all other occasions, the petitioner needs not appear before the Court below. However, on those occasions, the petitioner will have to be represented by counsel. If the petitioner's counsel is also absent, the benefit of dispensing with the personal appearance of the petitioner will stand automatically vacated.

Sd/-

Assistant Registrar (AD-II)

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Sub Assistant Registrar(CS)

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To:

The Judicial Magistrate, (Fast Track Court),  
Pattukottai.

**Crl.O.P. (MD)No.10858 of 2015**

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