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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

CrI.O.P(MD)No.16232 of 2015

and

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

A.Umar Farook

... Petitioner/Accused

Vs

Vijayalakshmi

... Respondent/Complainant

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for records pertaining to the proceedings in S.T.C.No.132 of 2014 on the file of the Judicial Magistrate No.VI, Trichy and quash the same.

For Petitioner : Mr.N.Anandakumar

For Respondent : Mr.P.Ganapathi Subramanian

ORDER

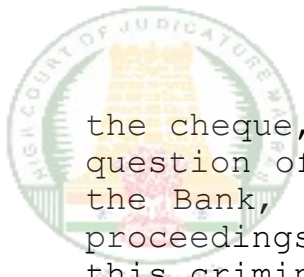
The petitioner is facing trial in S.T.C.No.132 of 2014 on the file of the Judicial Magistrate No.VI, Trichy. It is a private complaint instituted by the respondent herein for the offence under Sections 138 of the Negotiable Instruments Act. To quash the same, this criminal original petition has been filed.

2.The learned counsel appearing for the petitioner submits that the cheque is dated 12.04.2013. It was initially presented on 02.05.2013. It was dishonored. Subsequently, it was represented on 10.10.2013. It was dishonored on the second occasion. Thereafter, the present complaint came to be filed.

3.The petitioner's counsel would point out that the Reserve Bank of India had issued a communication bearing No.RBI-2011-2012-251, dated 04.11.2011 to all the Banks stating that the validity of the cheque is reduced from six months to three months. In this case, the cheque was presented beyond a period of three months. Therefore, the cheque was invalid. Hence, an invalid cheque cannot form foundation for maintaining the complaint.

4.I am unable to agree with this submission.

5.As rightly pointed out by the learned counsel appearing for the complainant, it is not the case of the accused that during the entire period, his bank account had sufficient cash balance to honor the cheque in question. The cheque was dishonored by the Bank concerned only on the ground of insufficiency of funds. More than anything else, in order to establish the validity or otherwise in



the cheque, the concerned bank official must be examined. This is a question of fact. On the strength of the communication from RBI to the Bank, the rights of the parties cannot be adjudicated in these proceedings. Therefore, leaving open the contentions and defences, this criminal original petition stands dismissed.

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6. Considering the facts and circumstances of the case, the personal appearance of the petitioner is dispensed with. The learned trial Magistrate shall insist on the personal appearance of the petitioner only when it is absolutely necessary and imperative. The petitioner shall be called upon to appear in person before the trial Court at the time of answering the charges and at the time of examination under Section 313 of Cr.P.C., and at the time of pronouncement of Judgment. On all other occasions, the petitioner can be represented through their counsel. It is made clear that this Court has not gone into the merits of the matter. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CrI.Side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

The Judicial Magistrate No.VI, Trichy.

+1 CC to M/s.N.ANANDAKUMAR, Advocate (SR-100667[F] dated 22/11/2019)

+1 CC to M/s.P.GANAPATHI SUBRAMANIAN, Advocate (SR-101081[F] dated 25/11/2019)

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and

M.P. (MD)No.1 of 2015
22.11.2019

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