

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Cr1.O.P.No.26378 of 2013

R.Radhakrishnan

... Petitioner

Vs.

N.Maruthamuthu

... Respondent

Prayer:Petition filed under Section 482 of Cr.P.C., seeking to call for the records of the criminal proceeding pending against him in C.C.No.209 of 2013 on the file of the learned Judicial Magistrate No.VI, Coimbatore and quash the same.

For Petitioner : Mr.P.M.Duraiswamy

For Respondent : No Appearance

O R D E R

This criminal original petition has been filed seeking to call for the records in C.C.No.209 of 2013 on the file of the learned Judicial Magistrate No.VI, Coimbatore and to quash the same.

2.The petitioner is the first accused in C.C.No.209 of 2013. The respondent/ complainant filed complaint under Section 200 of Cr.P.C., for the offence under Section 138 of the Negotiable Instruments Act. Challenging the same, this petition has been filed.

3.In the complaint it is alleged that the petitioner and the second accused are partners and doing business in the name of 'Guru Solutions' at Coimbatore and that they both had jointly borrowed a sum of Rs.10 Lakhs from the complainant for their urgent business expenses on 30.11.2011 and promised to repay the said loan amount with interest at the rate of 12% on demand.

4.It is further alleged that the accused have assured the complainant that they will jointly repay the said loan amount together with interest within one year and have jointly executed a promissory note in favour of the complainant for the amount borrowed. After expiry of one year, when the complainant contacted the accused and requested to repay the loan amount borrowed together with interest, the second accused with the

knowledge of the first accused had issued a cheque bearing number 879700 dated 17.12.2012 for a sum of Rs.10 Lakhs drawn on Axis Bank Limited, Vigneshwar Cresta, No.1095, Avinashi Road, Pappanaickenpalayam, Coimbatore in favour of the complainant towards the principal amount. However, the cheque when presented was returned unpaid on 19.12.2012 with an endorsement 'account closed'. Hence, the said complaint is challenged in this petition.

5.The learned counsel appearing for the petitioner would submit that though allegation is made in the complaint that the petitioner and the second accused are partners and doing business in the name of 'Guru Solutions' at Coimbatore, no document was annexed along with the complaint to prove the same. Further, though it is alleged that the cheque was issued by the second accused in the presence of the petitioner, no other allegation is made against the petitioner.

6.The learned counsel appearing for the petitioner would further submit that the above allegations are not sufficient to implicate the petitioner as accused in the complaint filed for the offence under Section 138 of the Negotiable Instruments Act. Accordingly, he prayed for allowing the criminal original petition.

7.There is no representation for the respondent. This Court perused the complaint.

8.In the complaint it is alleged that the petitioner and the second accused are partners and doing business in the name of 'Guru Solutions' at Coimbatore, however, no partnership deed or document was annexed along with the complaint to prove the same. Further, it is alleged that the cheque was issued by the second accused in the presence of the petitioner. Mere allegation is not sufficient to implicate the petitioner as accused in the complaint filed for the offence under Section 138 of the Negotiable Instruments Act. The respondent/ complainant must establish that the petitioner is involved in day to day affairs of the partnership firm by producing relevant materials.

9.Further, perusal of the instrument/ cheque disclose that the cheque was issued by the second accused in the capacity of 'Proprietor'.

10.In view of the above, I have no hesitation to quash the proceedings against the petitioner in C.C.No.209 of 2013 on the file of the learned Judicial Magistrate No.VI, Coimbatore.

11.This criminal original petition is accordingly allowed and the proceedings against the petitioner in C.C.No.209 of 2013

on the file of the learned Judicial Magistrate No.VI,
Coimbatore, is hereby quashed. Consequently, connected
miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

pri

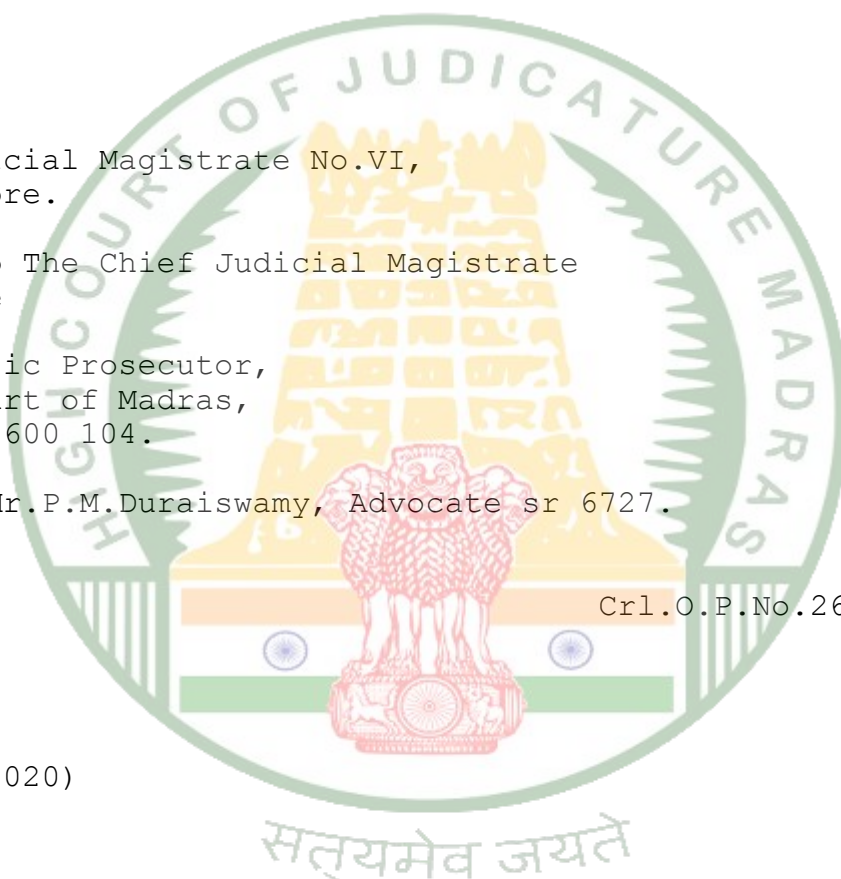
To

- 1.The Judicial Magistrate No.VI,
Coimbatore.
2. Do Thro The Chief Judicial Magistrate
Coimbatore
- 3.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

+1 CC to Mr.P.M.Duraiswamy, Advocate sr 6727.

Cr1.O.P.No.26378 of 2013

KK(CO)
SP(25/02/2020)



WEB COPY