

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.12.2020

PRONOUNCED ON : 04.12.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.2016 of 2016
and Crl.M.P.No.1007 of 2016

1.M.Jaishankar
2.Nagalakshmi

...Petitioners/Accused

Vs.

M/s.Sree Gokulam Chits and Finance
Corporation Private Limited,
Represented by its authorised person
P.Kaliappan,
having its office at Second floor,
Ramani Shopping Complex,
Opposite to New Bus Stand,
Omalur Main Road, Salem - 636 004. ...Respondent/complainant

Criminal Original Petition filed under Section 482 Cr.P.C.
to call for the records in C.C.No.291 of 2013 on the file of the
Judicial Magistrate Court No.V, Salem and quash the same.

For Petitioners : Mr.T.T.Ravichandran
For Respondent : No appearance

O R D E R

सत्यमेव जयते

This criminal original petition has been filed seeking to
call for the records in C.C.No.291 of 2013 on the file of the
Judicial Magistrate Court No.V, Salem and quash the same.

2. Sree Gokulam Chits and Finance Corporation Private
Limited (for brevity "Gokulam") has initiated a prosecution in
C.C.No.291 of 2013 in the Court of Judicial Magistrate No.V,
Salem, for the offence under Section 138 of the Negotiable
Instruments Act, 1881 (for brevity "the NI Act"), against
Jaishankar (A1) and Nagalakshmi (A2).

3. It is seen that the case was originally numbered as C.C.No.291 of 2013, when it was on the file of the Judicial Magistrate Court No.V, Salem. Thereafter, it was transferred to the file of the Judicial Magistrate Court No.II, Salem and re-numbered as S.T.C.No.442 of 2015. Subsequently, it was again transferred to the file of the Judicial Magistrate Court No.V, Salem and has been re-numbered as S.T.C.No.300 of 2016.

4. It is the case of Gokulam that Jaishankar (A1) joined some chit groups floated by them and became a subscriber; Jaishankar (A1) was given chit amounts, towards which, he issued some cheques as security; while so, Jaishankar (A1) defaulted on the repayment of the chits; when Jaishankar (A1) was informed that Gokulam will take legal action against him, he (A1) and his wife Nagalakshmi (A2) came for settlement, pursuant to which, Nagalakshmi (A2) issued a cheque dated 19.07.2013 bearing No.385089 for a sum of Rs.44,19,100/- drawn on Axis bank, Salem, in favour of Gokulam; when Gokulam presented the said cheque, it was returned unpaid with the endorsement "payment stopped by the drawer" vide return memo dated 22.07.2013; Gokulam issued a statutory demand notice dated 19.08.2013, for which, Jaishankar (A1) and Nagalakshmi (A2) issued a reply notice dated 06.09.2013; since Jaishankar (A1) and Nagalakshmi (A2) did not comply with demand, Gokulam initiated a prosecution under Section 138 of the NI Act against them as aforesaid.

5. Heard Mr.T.T.Ravichandran, learned counsel Jaishankar (A1) and Nagalakshmi (A2), petitioners herein. Notice has been served on Gokulam, respondent herein and their name was printed in the cause list.

6. The learned counsel for the petitioners took this Court through the various transactions to show that the impugned cheque was not given in the circumstances as alleged by Gokulam.

7. In the opinion of this Court, these are disputed questions of fact, which cannot be gone into in a quash petition under Section 482 Cr.P.C. However, it is seen that the impugned cheque in this case has been issued by Nagalakshmi (A2) from her personal bank account in discharge of the debt of her husband Jaishankar (A1). The impugned cheque has not been issued from the bank account of any juristic entity for invoking vicarious liability provision viz., Section 141 of the NI Act.

8. It is trite that if a cheque is issued by a person in discharge of the liability of another person and if the cheque is dishonoured, the person, who issued the cheque can be prosecuted under Section 138 of the NI Act. Just because Jaishankar (A1) was the beneficiary of the loan, he cannot be prosecuted under Section 138 of the NI Act for the dishonour of the cheque issued by his wife Nagalakshmi (A2).

9. In the result, this criminal original petition is partly allowed with the following directions:

- The prosecution in S.T.C.No.300 of 2016 (old No.C.C.No.391 of 2013) on the file of the Judicial Magistrate Court No.V, Salem, is quashed as against Jaishankar (A1);
- Nagalakshmi (A2) shall appear before the Judicial Magistrate Court No.V, Salem, at 10.30 a.m. on 19.01.2021;
- Thereafter, Nagalakshmi (A2) shall file a bail petition under Section 436 Cr.P.C. and execute a bond for a sum of Rs.10,000/- with two sureties;
- Nagalakshmi (A2) shall be released on bail, on the same day of her appearance and execution of bond before the trial Court;
- After her release on bail, Nagalakshmi (A2) shall cooperate in the expeditious disposal of the case and not adopt any dilatory tactics;
- Nagalakshmi (A2) shall cross-examine the witnesses on the day they are examined-in-chief as held by the Supreme Court in Vinod Kumar vs. State of Punjab¹; and
- If Nagalakshmi (A2) absconds, a fresh FIR can be registered under Section 229A IPC.

Connected CrI.M.P. is closed.

Sd/-

Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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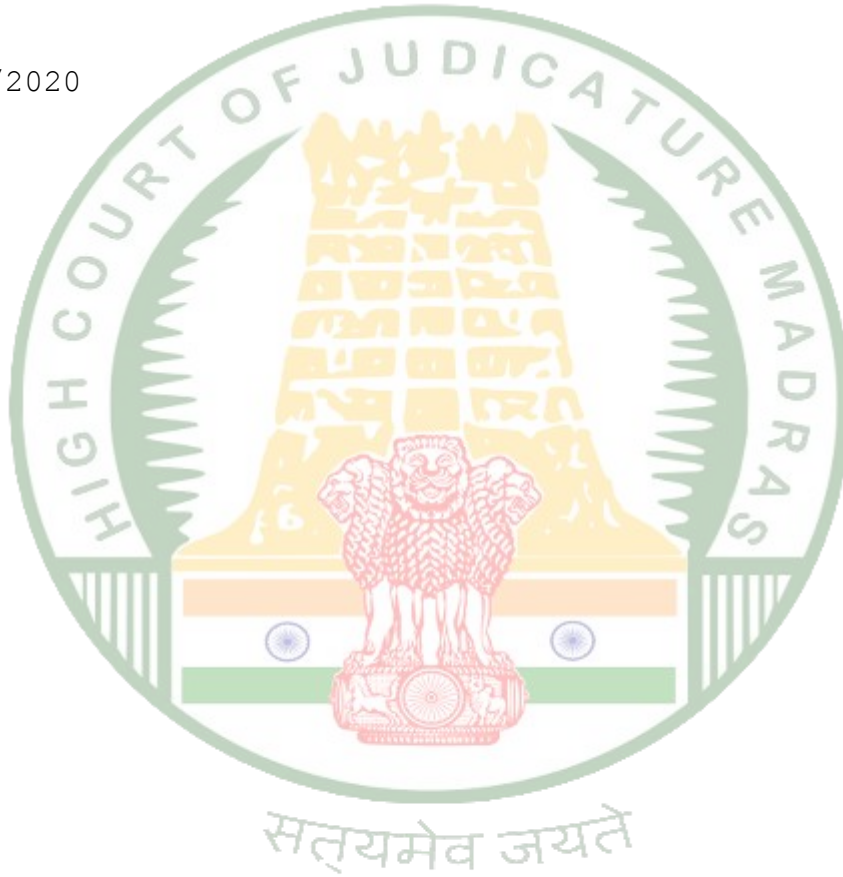
To

1.The Judicial Magistrate No.V,
Salem.

2.The Chief Judicial Magistrate,
Salem.

CrI.O.P.No.2016 of 2016

SSI (CO)
KKV/14/12/2020



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