

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.09.2020

Pronounced on : 09.10.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.OP.No.9329 of 2018
and Crl.MP.No.4815 of 2018
and Crl.MP.No.9777 of 2019

M.Santhanamary ... Petitioner / Accused

Vs.

Anandram Varadarajan
Represented by his Power of Attorney
Mr.M.S.Ramesh ... Respondent / Complainant

Criminal Original Petition filed under Section 482 Cr.P.C.,
praying to call for the records and quash the case in
C.C.No.2174 of 2016, pending before the III Fast Track Court,
Saidapet, Chennai.

For Petitioner : Mr.K.Sathyabal

For Respondent : Mr.B.Vijay

ORDER

This case was heard through video conferencing.

2. For the sake of convenience, the parties would be referred to as the complainant and the accused.

3.1 The case of the complainant (Anandram Varadharajan) is that he and one Mrs.Radha Ramesh are the absolute owners of the Flat No.401, in 'Surendra Homes', at Door No.1, Pammal Main Road, Pallavaram, Chennai - 600 043 and that the accused had approached him, sometime in the month of September 2014 for purchase of the said property, and the sale was concluded at Rs.85 lakhs. Thereafter, the complainant and his co-owner executed a sale deed in favour of the accused on 03.11.2014, and towards the sale consideration of Rs.85 lakhs, received two demand drafts viz., 247373 & 247374, both dated 05.11.2014, for

a sum of Rs.50 lakhs; and three cheques viz., Ch.No.050191 for Rs.15 lakhs; Ch.No.050192 for Rs.10 lakhs, and Ch.No.050193 for Rs.10 lakhs, all drawn on Tamil Nadu Mercantile Bank, Sholinganallur Branch, by the accused. The dates in the cheques were not filled by the accused and the accused had requested the owners of the property to present the cheques only when she makes arrangement for clearance of the cheques.

3.2 Sometime in the fourth week of November 2015, the accused herself had contacted Anandram Varadharajan and instructed him to present the cheque bearing No.050192 on 30.11.2015, and accordingly, Anandram Varadharajan filled the date in the cheque as 30.11.2015 and presented it on 30.11.2015 for clearance. This cheque was returned by the Bank vide Return Memo dated 01.12.2015 indicating "funds insufficient". Since the attempts made by him to approach the accused, went in vain, he issued a legal notice dated 28.12.2015, requiring the accused to pay the sum of Rs.10 lakhs and this notice was delivered to the accused on 30.12.2015.

3.3 Thereafter, Anandram Varadharajan, represented by his Power Agent Mr.M.S.Ramesh initiated a prosecution in C.C.No.2174 of 2016, (originally before the Judicial Magistrate No.XVII, Saidapet) which is now pending on the file of the III Fast Track Court, Saidapet, Chennai, for the offence under Section 138 of the Negotiable Instruments Act, 1881, against the accused, and to quash the said case, the accused has preferred the present criminal original petition.

4. Heard Mr.K.Sathyabal, learned counsel appearing for the accused and Mr.B.Vijay, learned counsel appearing for the respondent.

5. Mr.K.Sathyabal, learned counsel appearing for the petitioner/accused contended that the impugned cheque bearing No.050192 was issued on 03.11.2014, but it was presented for clearance by the complainant only on 30.11.2015, which is after its validity.

6. Per contra, Mr.B.Vijay, learned counsel appearing for the respondent/complainant contended that the impugned cheque is dated 30.11.2015, and not 03.11.2014. He further contended that while executing the sale deed on 03.11.2014, the accused gave the impugned cheque along with two other cheques, all cheques undated, to the complainant, and that only on the instructions of the accused, the complainant has presented the impugned cheque for clearance on 30.11.2015 in Andhra Bank, Alwarpet Branch, Chennai, after duly filling up the date as 30.11.2015.

7. This Court gave its anxious consideration to the rival submissions.

8. A reading of the statutory demand notice of the complainant shows that the complainant had not suppressed the fact that the impugned cheque was handed over to him on 03.11.2014, but, as contended, it is an undated cheque and the date was filled by him, only after the accused gave clearance for presenting it.

9. Mr.K.Sathyabal, learned counsel for the petitioner/accused took this Court through the pleadings in the connected suit between the parties to show that there are contradictions in the stand of the complainant.

10. In the opinion of this Court, the pleadings in the connected suit cannot be gone into in a proceedings under Section 482 Cr.P.C. That apart, information called for from the trial Court shows that in C.C.No.2174 of 2016, P.W.1 was examined in chief on 15.09.2016; the accused was examined under Section 313 Cr.P.C., on 11.05.2017; the accused filed an application under Section 311 Cr.P.C., on 15.06.2017, for recalling P.W.1, which was allowed on 02.08.2017. Only thereafter, the accused had filed the present quash petition in CrI.OP.No.9329 of 2018 on 22.03.2018, and has obtained an order of stay on 03.07.2018. Thus, it is apparent that the trial has reached an advanced stage, and this was not brought to the notice of this Court by the accused in the present quash petition. It is pertinent to state here that the cheque was not returned on the ground that it was time barred but on the ground of insufficiency of funds.

11. In such view of the matter, disputed facts cannot be gone into in the present quash petition. This petition is devoid of merits and hence, dismissed. The petitioner is directed to appear before the trial Court and raise all the defences available to her in the manner known to law. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

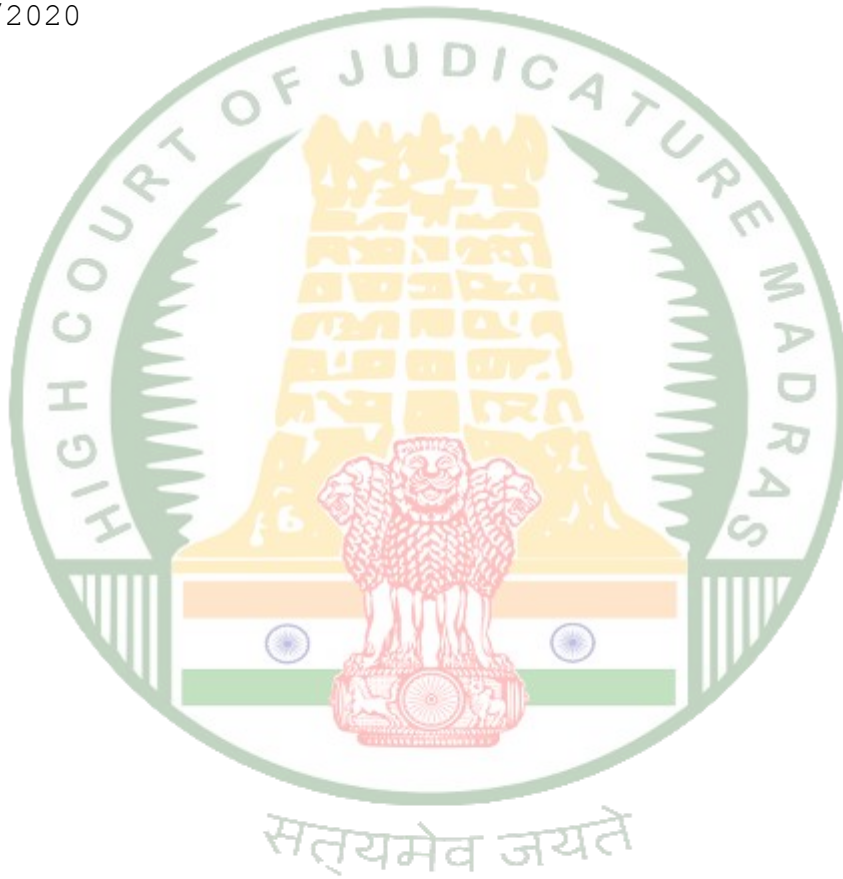
Sub Assistant Registrar

To:

The Judge,
Fast Track Court No.III,
Saidapet, Chennai.

CrI.OP.No.9329 of 2018

mp[co]
srg 21/10/2020



WEB COPY