

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.02.2020
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.18917 of 2014
and
Crl.M.P.No.1 of 2014

R.Manimozhi

... Petitioner

Vs.

K.T.Thambi Arasu

... Respondent

Prayer: Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to C.C.No.1274 of 2014 on the file of the Fast Track Court No.III (Magistrate Level), Saidapet, Chennai and quash the same.

For Petitioner : M/s.B.Kumarasamy
For Respondent : Mr.V.Raghavachari

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.1274 of 2014 on the file of the Fast Track Court No.III (Magistrate Level), Saidapet.

2.The case of the respondent is that when the respondent was working as Manager in State Bank of India, Neyveli during the year 2011, the petitioner borrowed a loan for a sum of Rs.15,51,000/- (Rupees fifteen lakh fifty one thousand only) in various dated from 23.02.2012 to 12.04.2012 and the petitioner assured that he will settle the loan by mortgaging his property. In discharge of a part liability, the petitioner issued a cheque in favour of the respondent for a sum of Rs.14,51,000/- in bearing No.535324 drawn on State Bank of India, Thirupapuliyur. When the respondent presented the cheque for collection of amount through his bank viz., State Bank of India, Neyveli on 29.06.2013, the cheque was returned with an endorsement "Funds Insufficient" on 09.07.2013. After knowledge of the dishonour of cheque, the respondent issued a legal notice on 13.12.2013. On receipt of the legal notice, the petitioner sent a reply dated 03.01.2014 to the respondent by ignoring the transaction between them. Hence, the complainant filed a private complaint before the trial Court. Challenging the same, the present petition has been filed by the petitioner.

3.The learned counsel for the petitioner would submit that without going into the merits of the case, he has placed his arguments on the ground that the legal notice was sent by the respondent beyond the period of 30 days as contemplated under Section 138(b) of the Negotiable Instruments Act, 1881. He would further submit that cheque was returned on 29.06.2013 and the respondent has to issue a legal notice within a period of thirty days from the date of dishonour of the cheque, however, he sent a legal notice beyond the period of thirty days on 13.12.2013. Hence, on the sole ground the impugned complaint is liable to be quashed.

4.The learned counsel for the respondent has not disputed the fact adduced by the learned counsel for the petitioner.

5.This Court has considered the submissions made on either side and perused the materials available on records.

6.It is seen that the cheque was returned with an endorsement "Funds Insufficient" on 09.07.2013. After knowledge of the dishonour of cheque, the respondent issued a legal notice to the petitioner on 13.12.2013. A reading of Section 138(b) of the Negotiable Instruments Act, 1881 shows that payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid. Section 138 (b) of the Negotiable Instruments Act, 1881 reads as follows:-

"(b) payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid."

7.Hence, it is very clear that the respondent has to make a demand for the payment of the said amount of money by giving a legal notice to the respondent within a period of thirty days on receipt of the information from the bank regarding the return of the cheque. In the present case, the respondent made a demand for the payment of the said amount of money by giving a legal notice to the petitioner beyond the period of thirty days on receipt of the information from the bank regarding the return of the cheque.

8.In the result, the impugned proceedings in C.C.1274 of 2014 on the file of the Fast Track Court No.III (Magistrate Level), Saidapet is hereby quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

vv2

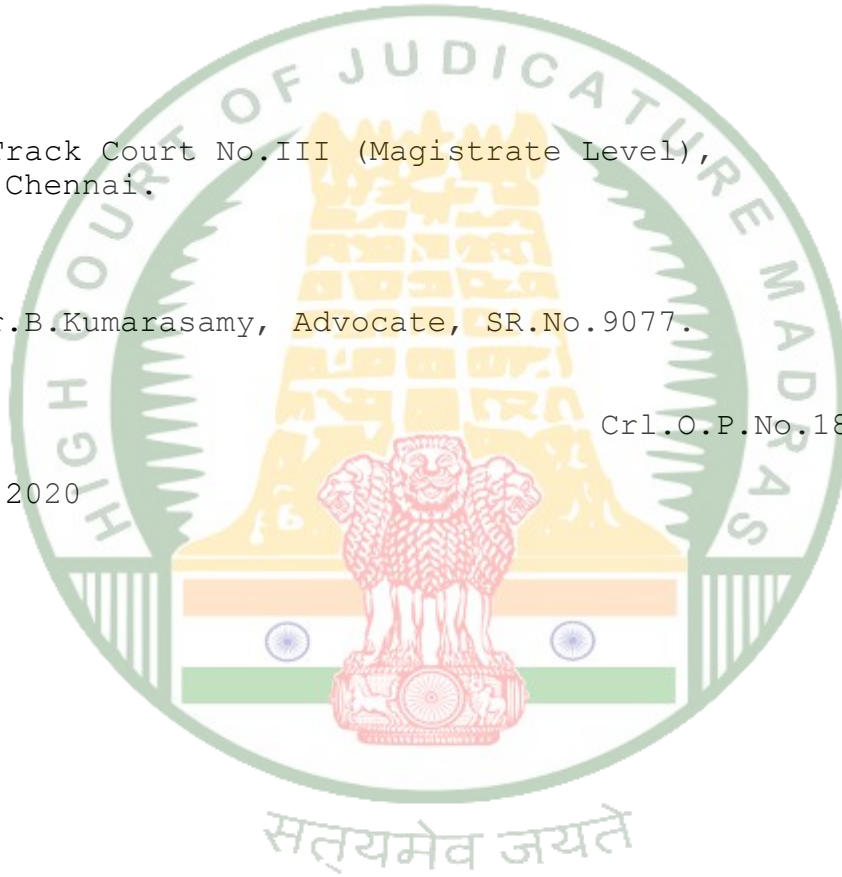
To

The Fast Track Court No.III (Magistrate Level),
Saidapet, Chennai.

+1cc to Mr.B.Kumarasamy, Advocate, SR.No.9077.

Crl.O.P.No.18917 of 2014

SSI (CO)
CSR:05.03.2020



WEB COPY