

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2020

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. No. 22244 of 2017

and

Crl.MP. No. 13055 of 2017

Roopa Joshi

... Petitioner

Versus

M/s.Arjun Amaravathi Chits(P) Ltd.,
Rep.by Executive Assistant
Mr.A.Usain, S/o, Ansar Bawha,
No.337, Old No.164 III Floor,
Singapore Plaza, Linghi Chetty St,
Chennai - 600 001.

.... Respondent

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to quash the C.C. No. 438 of 2017 on the file of IV Fast Track Court, Metropolitan Magistrate Court, George Town at Chennai 600 001, under Section 138 of the Negotiable Instruments Act.

For Petitioner : No Appearance

For Respondent : Mr.M.J.Jaseem Mohammed

O R D E R

This petition has been filed to quash the proceedings in CC. No. 438 of 2017 on the file of the IV-Fast Track Court, Metropolitan Magistrate Court, George Town, Chennai.

2. It is seen from the petition that the petitioner is an accused in the proceedings initiated for the offence punishable under Section 138 of Negotiable Instruments Act in CC. No. 438 of 2017.

3.It is stated by the learned counsel for the petitioner that the petitioner is only a surety even as per the case of the respondent and she was not a beneficiary of the funds provided by the respondent. The respondent failed to prosecute the beneficiary and as such there is absolutely no legally enforceable debt on the part of the petitioner herein to the respondent.

4.The learned counsel appearing for the respondent has submitted that though the petitioner is a surety, she only issued the cheque for the settlement of the amount with an intention to cheat the respondent /de-facto complainant. The cheque issued by the petitioner was presented for collection, but the same was returned for the reason that 'account closed'. Therefore, she committed the alleged offence under Section 138 of the Negotiable Instruments Act. Furthermore, trial has already been commenced and the respondent has been partly cross-examined by the petitioner.

5. It is seen that the proceedings has been initiated by the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act by stating that the petitioner/accused stood as a surety for her husband, who was one of the subscribers of the chit conducted by the respondent/complainant. The husband of the petitioner owed money to the respondent in respect of one chit transaction. It is also stated that the petitioner issued the cheque to discharge the debt and therefore she is liable to the respondent/de-facto complainant for a sum of Rs.2,65,000/-. The cheque was presented for collection and returned for the reason 'account closed'. Thus, prima facie, the averments made in the complaint indicate that there is a legally enforceable debt on the part of the petitioner to the respondent. Moreover, the grounds raised by the petitioner cannot be entertained under Section 482 of Cr.P.C., since it is a mixed question of law and facts and it has to be tried during the course of trial.

6.The learned counsel appearing for the respondent has submitted that trial has already been commenced, the de-facto complainant appeared and cross-examined by the petitioner herein. Therefore, this Court is not inclined to entertain this petition.

7.Accordingly, the Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

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-s/d-

Assistant Registrar

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Sub-Assistant Registrar

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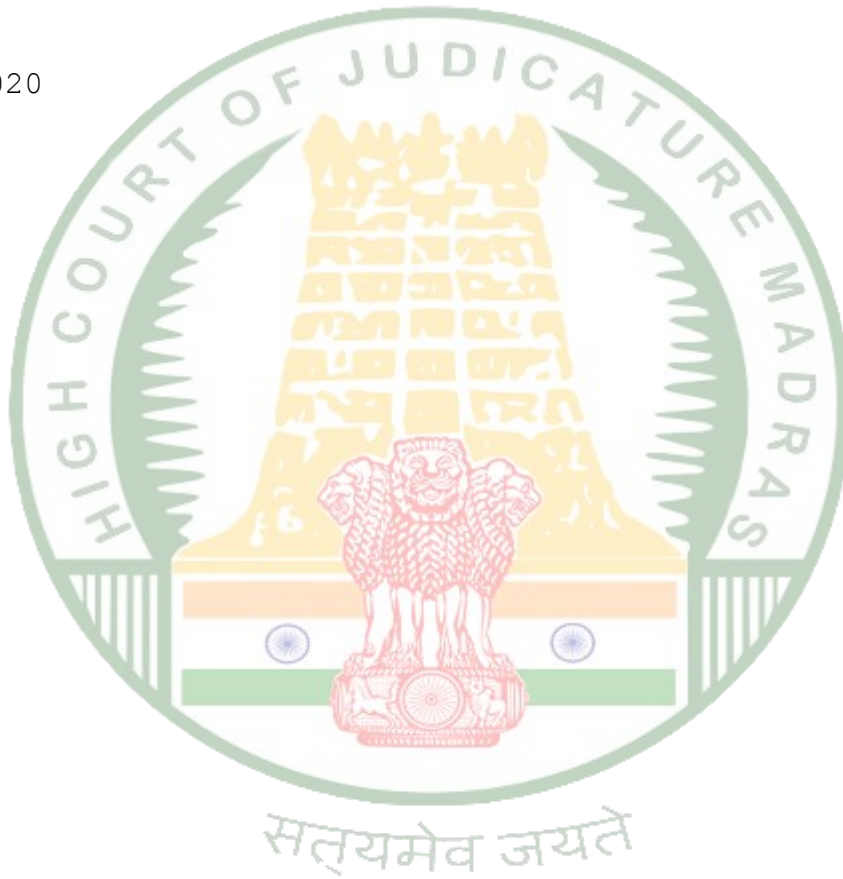
To

1.The Metropolitan Magistrate
IVth Fast Track Court
George Town Chennai

2.The Public Prosecutor High Court Madras

Crl.O.P.No.22244 of 2017
and
Crl.MP.No.13055 of 2017

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