

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2016

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.OP.No.10038 of 2016
and
CRL.MP.Nos.5337, 5338 of 2016

P.Vijayakumar ... Petitioner/Accused

Vs

D.Ganesan ... Respondent/Complainant

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records in connection with in STC.No.2066 of 2015 on the file of the learned Judicial Magistrate, Thiruvottiyur and quash the same.

For Petitioner : Mr.Thiagarajan
for Mr.E.C.Murali

For Respondent : Mr.V.Kannadasan

O R D E R

This petition has been filed to quash the proceedings in STC.No.2066 of 2015 on the file of the Judicial Magistrate Court, Thiruvottiyur.

2. Heard the learned counsel for the petitioner; learned counsel appearing for the respondent and perused the materials placed on record.

3. For the sake of convenience, the parties will be referred to as complainant and accused. It is the case of the complainant that he is running a business in the name and style of M/s.Renuka Enterprises and that the accused has issued post dated cheque for Rs.1,80,00,000/- dated 18.07.2014, which when presented, was returned as 'funds insufficient'. The complainant issued a statutory notice dated 11.08.2014 for which, the accused sent a reply dated 14.08.2014, but did not make the payment as demanded vide statutory notice. Therefore, the complainant has preferred the present complaint in STC.No.2066 of 2015 before the learned Judicial Magistrate, Thiruvottiyur against the accused for an offence under Section 138 of Negotiable Instruments Act, 1881. Challenging which, the accused is before this Court.

4. Learned counsel for the accused submitted that the accused has not issued the impugned cheque at all, inasmuch as way back on 08.03.2012, the accused has given a letter to the Manager, Indian Bank, where he is an account holder, stating that the cheque leaf bearing No.914360 has been misplaced. Therefore, the learned counsel submitted that the entire prosecution stands vitiated.

5. In the considered opinion of this Court, this fact cannot be gone into in a petition under Section 482 Cr.P.C. as they are disputed questions of fact.

6. Learned counsel for the accused would further submit that the accused has lodged a complaint dated 24.08.2012 to the Commissioner of Police alleging that the complainant is unnecessarily harassing him.

7. That apart, on the complaint lodged by the complainant, a case in Crime No.2561 of 2012 has been registered against the accused, which is pending investigation. On all these grounds, the entire prosecution cannot be quashed as they are disputed questions of fact, which cannot be gone into in a petition under Section 482 Cr.P.C. as held by the Hon'ble Supreme Court in S.Krishnamurthy Vs Chellammal [2015] 4 Scale 371.

8. In the result, the petition is devoid of merits and stands dismissed, with liberty to the accused to raise all the points before the trial Court. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

gya

To

1.The Judicial Magistrate,
Thiruvottiyur.

2.The Chief Judicial Magistrate,
Thiruvottiyur.(For Information)

+lcc to Mr.E.C.Murali, Advocate, S.R.No.39588

+lcc to Mr.V.Kannadasan, Advocate, S.R.No.39586

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CTK(CO)

CA(27/07/2016)

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