

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2016

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.9954 of 2016

and

Crl.MP.No.5275 & 5276 of 2016

Suresh @ Marisamy ...Petitioner/3rd Accused
Vs.

1.Jyothik Engineering Enterprises,
Rep its Partner / Authorized Signatory,
Mr.K.Saravanaperumal
No.202/B, Nehru Street,
Alwarthirunagar, Chennai - 600 087.. 1st Respondent/1st Accused

2.K.Saravanaperumal ... 2nd Respondent/2nd Accused

3.Abdul Razak
Rep by Power Agent
Mr.A.Abdul Kadhar Sultan ... 3rd Respondents/Complainant.

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C to call for the records relating to the C.C.No.140 of 2015 on the file of the Judicial Magistrate No.2, Udumalpet and quash the same by allowing the Criminal Original Petition.

For Petitioner : Mr.M.Arunachalam

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.140 of 2015 on the file of the learned Judicial Magistrate No.II, Udumalpet.

2. It is seen that one Abdul Razak has initiated prosecution under Section 138 of the Negotiable Instruments Act in C.C.No.140 of 2015 before the learned Judicial Magistrate No.II, Udumalpet against 1) M/s.Jyothik Engineering Enterprises 2) K.Saravana Perumal and 3) Suresh (alias) Marisamy.

3. The complaint proceeds on the footing that Jyothik Engineering Enterprises is a partnership firm, in which K.Saravana Perumal and Suresh are partners. Challenging the prosecution, Suresh as petitioner herein, is before this Court.

4. The learned counsel for the petitioner has submitted that Suresh has resigned from the partnership firm way back on 06.06.2014 and the impugned cheque was issued only on 31.07.2015 and therefore, Suresh cannot be mulcted with criminal liability.

5. In the considered opinion of this Court, disputed question of fact cannot be looked into in the application under Section 482 Cr.P.C., Therefore, this Criminal Original Petition is dismissed with liberty to the petitioner to raise all his contentions before the trial Court. Consequently, connected Miscellaneous Petitions are closed.

6. At this juncture, the learned counsel for the petitioner seeks permission for dispensing with the personal appearance of the petitioner before the Trial Court. In view of the same, the petitioner shall furnish a bond of Rs.10,000/- with two sureties under Section 88 Cr.P.C. to the satisfaction of the learned Judicial Magistrate No.II, Udumalpet.. This Court directs the petitioner to appear before the trial Court, for receiving the complaint, for answering the charge, at the time of questioning under Section 313 Cr.P.C., and at the time of passing judgment. The petitioner shall file an affidavit of undertaking before the trial Court that he will not dispute his identity and that his counsel will cross-examine the prosecution witness on the day, they are examined in-chief and that he will not adopt dilatory tactics. On such undertaking, the trial Court shall dispense with the personal appearance of the petitioner. If the petitioner adopts any dilatory tactics, the trial Court can insist on his presence.

7. The trial Court is directed to complete the trial within a period of six months from the date of receipt of a copy of this order.

ds

-s/d-

Assistant Registrar (J)

True Copy

Sub-Assistant Registrar

To

1. The Judicial Magistrate No.2,
Udumalpet.

2. do thro the Chief Judicial Magistrate,
Tiruppur.

bvr(co)
prk20/6

Cr1.O.P.No.9954 of 2016