



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2017

CORAM:

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THE HONOURABLE MR. JUSTICE P.N.PRAKASH

**Crl.O.P.(MD)No.2806 of 2017
and Crl.M.P.Nos.2150 and 2151/2017**

Nagarajan

.. Petitioner

Vs.

K.Murugesan

.. Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. Praying to call for the records relating to the private complaint in C.C.No.487/2016 on the file of the Fast Track Court, Magisterial Level, Karur and quash the same as illegal.

For Petitioner : Mr.R.Gandhi

ORDER

This criminal original petition has been filed to quash the case in C.C.No.487/2016 on the file of the Fast Track Court, Magisterial Level, Karur.

2. The respondent has initiated a prosecution in STC No.733/2016 on the file of the Judicial Magistrate Court No.I, Karur for offence under Section 138 of the Negotiable Instruments Act, challenging which, the petitioner is before this Court.

3. It is the case of the respondent that the petitioner had borrowed Rs.25 lakhs and had executed a demand promissory note dated 16.09.2015 and in discharge of the said liability, he had issued the impugned cheque dated 07.12.2015, which when presented by the respondent/complainant was dishonoured on the ground that 'account closed'. The respondent issued a statutory notice dated 04.01.2016, for which, the petitioner had issued a reply notice dated 12.01.2016 and rejoinder has been issued by the respondent dated 16.02.2016. Thereafter, the respondent has initiated the aforesaid prosecution.

4. The learned counsel for the petitioner contended that the prosecution is an abuse of process of law, because the account was closed in the year 2007 itself and that ING Vysya Bank Limited, on which, the cheque was drawn had merged with Kotak Mahindra Bank in

the year 2015, ie., on 01.04.2015 and therefore, the petitioner could not have issued the cheque dated 07.12.2015 and therefore, the prosecution has to be quashed.

5. This Court is not able to agree with the learned counsel for the petitioner, because, the petitioner could have issued a post dated cheque for the loan that was taken, because they are disputed question of fact, which cannot be gone into in the quash proceedings under Section 482 Cr.P.C., in the light of the law laid down by the Supreme Court in Krishnamoorthy vs. Chellammal reported in 2015 (4) Scale 371.

6. As regards the contention that the account was closed and therefore, the prosecution should be quashed, this Court is of the view that closure of account is also one of the reasons for mulcting liability under Section 138 of the Negotiable Instruments Act, because the cheque stood dishonoured when presented.

7. The learned counsel for the petitioner would further contend that on the complaint given by the petitioner, an FIR has been registered by the Anna Nagar Police Station against the respondent in Crime No.2552/2016 for offence under Sections 406, 420, 465, 468 and 471 IPC and therefore, the present prosecution should be quashed.

8. On a reading of the FIR in Crime No.2552/2016, it is seen that this petitioner had given a complaint to the Annanagar Police and had filed a direction petition in Crl.O.P.(MD) No.16892/2016 for a direction to the Annanagar Police to register an FIR on the strength of the orders passed by this Court dated 09.09.2016, an FIR appears to have been registered. Registration of the FIR is not the on all and end all of the prosecution, because, it is only a beginning of the prosecution case and the police can also close the FIR, if they find that the entire allegation is of civil in nature. Since there are prima facie materials for the prosecution to proceed in STC No.487/2016, it is not a fit case to quash the same at the threshold.

9. In the result, this petition is dismissed with liberty to the petitioner to raise all the points before the trial Court. However, the presence of the petitioner before the trial Court is dispensed with and the petitioner shall appear before the Trial Court for collecting the complaint and other papers under Section 207 Cr.P.C., for framing the charges, for questioning under Section 313 Cr.P.C. and on the day of judgment. On all other dates, if the petitioner files an application under Section 317 Cr.P.C., undertaking that he will not dispute his identity and that his counsel will cross-examine the prosecution witnesses in person and without adopting dilatory tactics, the Trial Court may liberally consider and entertain the same. If the petitioner adopts any dilatory tactics, it is open to the Trial Court to



insist upon his presence. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

To

1.The Fast Track Court, Magisterial Level,
Karur

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

RR

PSM/MR/03.04.2017/3P/3C

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