



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.04.2017

CORAM

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. (MD) No.5058 of 2017 and

Crl.M.P. (MD) Nos.3574 & 3575 of 2017

WEB COPY

1. V.Gnanaraj

2. M/s.Zion Town,
Its Proprietor Mr.V.Gnanaraj,
K.A.Building, Door No.5,
Gandhi Irwin Road, Egmore,
Chennai-600 008

... Petitioners/Accused

-vs-

N.S.Joseph Israel

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records in C.C.No.78 of 17 on the file of FTC/Judicial Magistrate (Magistrate Level), Tuticorin and quash the same.

For petitioners : Mr.P.Sivamani

O R D E R

This petition has been filed to call for the records in C.C.No.78 of 17 on the file of FTC/Judicial Magistrate (Magistrate Level), Tuticorin and quash the same.

2. It is the case of Joseph Israel that M/s.Zion Town is a proprietorship concern and the proprietor is one Gnanaraj and that Gnanaraj is into Real Estate Business. Joseph Israel gave Rs.2,00,000/- to Gnanaraj for purchase of a plot and since there were defects in the title, he demanded the return of the amount. Gnanaraj gave the impugned cheque dated 08.11.2016 for Rs.2,00,000/-, which, when presented by Joseph Israel, got dishonored on 13.11.2016 for insufficiency of funds. Joseph Israel issued a notice on 07.01.2017 and thereafter, has filed a prosecution in C.C.No.78 of 2017, which is now pending on the file of FTC/Judicial Magistrate (Magistrate Level), Tuticorin against Gnanaraj and Zion Town, challenging which, Gnanaraj and Zion Town are before this Court.

3. Heard the learned counsel for the petitioners/accused.

4. Learned counsel for the petitioners submitted that the cheque was given only as security and not towards the discharge of legal liability. He also submitted that the statutory notice was served on the accused in the manner known to law and therefore, the prosecution is vitiated.



5. The points raised by the learned counsel for the accused are disputed questions of fact, which cannot be looked into in a petition under Section 482 Cr.P.C., in the light of the law laid down by the Supreme Court in the case of *S.Krishnamoorthy vs. Chellammal*, reported in AIR 2015 SC 3182. Whether the impugned cheque dated 08.11.2016 was given in discharge of liability or as security is a disputed fact, which has to be decided only during trial.

6. As regards the contention that the statutory notice was not served on the accused, it is averred in the complaint that the statutory notice was returned by the Postal Authority with the endorsement 'left'. Thus, there is a compliance of service of statutory notice on the accused. When there are prima facie materials in the complaint, the same cannot be quashed. Hence, this petition stands dismissed.

7. At this juncture, learned counsel for the petitioners submitted that if the parties are referred to the Mediation Centre, there is every possibility of they arriving at a settlement.

8. Accepting the submission, this Court directs Gnanaraj to surrender before the learned Judicial Magistrate/FTC (Magistrate Level), Tuticorin within four weeks from the date of receipt of a copy of this order and on such surrender, he shall be released on bail under Section 436 Cr.P.C. on his executing a bond for Rs.10,000/- without sureties. Thereafter, learned Magistrate is directed to refer the parties to the Local Mediation Centre to complete the mediation process within three months thereafter. If the mediation process fails, the Trial Court shall proceed with the trial in accordance with law without in any manner influenced by what is stated hereinabove. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To:

The FTC/Judicial Magistrate (Magistrate Level),
Tuticorin.

AR

KK/SV/SAR3-12.05.2017-2P-2C

Cr1.O.P. (MD) No.5058 of 2017
25.04.2017