



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.03.2017

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

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**Crl.O.P. (MD) No.21754 of 2016 and
Crl.M.P. (MD) Nos.11190 & 11191 of 2016**

K.V.M.Jeeva

... Petitioner/Accused

-VS-

M/s.Abimanyu Credits,
Rep. by its Partner,
A.Vijayan, S/o.Arjunan,
Door No.43, 3rd Floor,
Padma Tower, Covai Road,
Karur-2.

... Respondent/Complainant

Prayer: Petition filed under Section 482 of Code of Criminal Procedure to call for the records pertaining to C.C.No.74 of 2016 on the file of the Fast Track Court at Magisterial level at Karur and to quash the same as illegal.

For Petitioner : Mr.P.Muthuvijayapandian

ORDER

This petition has been filed to call for the records pertaining to C.C.No.74 of 2016 on the file of the Fast Track Court at Magisterial level at Karur and to quash the same as illegal.

2. For the sake of convenience, the parties are referred to as the complainant and the accused.

3. It is the case of the complainant that the accused had borrowed Rs.4,08,500/- on 03.11.2012 and executed a promissory note dated 03.11.2012. In discharge of the said liability, the petitioner had issued a cheque dated 16.04.2014, which was presented by the complainant on 16.04.2014, but the same was returned for insufficiency of funds. The complainant approached the accused and on the request of the accused, the complainant once again re-presented the cheque on 05.06.2014 and again the cheque was returned unpaid. Therefore, the complainant issued a statutory notice dated 09.07.2014, for which, the accused issued a reply notice dated 22.07.2014 denying his liability. Thereafter, the complainant has initiated prosecution in C.C.No.74 of 2016 on



the file of the Fast Track Court at Magisterial Level at Karur for offence under Section 138 of N.I.Act, for quashing which, the accused is before this Court.

4. Learned counsel for the petitioner submitted that the complainant suppressed several facts inasmuch as the complainant and the accused were having dealings with regard to purchase and sale of properties and the accused had not borrowed any loan as alleged by the complainant. In this regard, learned counsel for the petitioner drew the attention of this Court to various agreements annexed in the typeset of papers that were executed between the complainant and the accused. He further submitted that the said cheque was given as security and the same has been misused by the complainant. He also submitted that the complainant had initiated several litigations against the accused namely, filing suits, giving police complaints, apart from initiating prosecution under Section 138 of N.I.Act. At last, learned counsel for the petitioner fairly submitted that the chief examination of P.W.1 has already been recorded and therefore, this Court cannot interfere with the prosecution at this stage.

5. This Court gave its anxious consideration to the rival submissions.

6. It is not open for this Court to invoke inherent jurisdiction of this Court under Section 482 Cr.P.C. at this stage to quash the prosecution. Moreover, all 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 16.04.2014 was given in discharge of liability or as security is a disputed fact, which has to be decided only during trial.

7. As regards the contention of the accused that there are several litigations initiated by the complainant, this Court is of the view that the remedy under Section 138 of N.I.Act does not exclude other legal remedy. It is seen that the prosecution is pending from the year 2012.

8. Therefore, this petition is closed with liberty to the petitioner to raise all the points before the Trial Court. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

/True copy/



To:

The Fast Track Court at Magisterial level,
Karur.

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+1 cc to Mr.P.Muthuvijayapandian , Advocate in SR.No. 18232

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AE/MMS/SAR4/20.04.2017/3P/3C

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24.03.2017