

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2018

CORAM

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

CrI.O.P. No.10132 of 2018

and CrI.M.P.Nos.5151 and 5152 of 2018

E.Marimuthu

Petitioner

vs.

Super Breeding Farm
having its Office at Door No.1/252,
Chitampalam, Venkittapuram Post
Palladam 614 664
Tiruppur District
Tamil Nadu
rep. by its Authorised person Power Agent/
General Manager
R.Ravikumar

Respondent

Criminal Original Petition filed under Section 482, Cr.P.C.
to call for the records of the Judicial Magistrate, Palladam
with reference to STC No.2071 of 2017, pending on its file and
quash the same.

For petitioner Mr.C.Prabakaran

ORDER

This petition has been filed to call for the records of
the Judicial Magistrate, Palladam with reference to STC No.2071
of 2017, pending on his file and quash the same.

2. For the sake of convenience, the petitioner and the
respondent will be referred to as the accused and the
complainant respectively.

3. It is the case of the complainant that the accused had
purchased broiler chicken birds on credit from the complaint and
towards the purchase, the accused was due a sum of
Rs.6,93,590/-. Towards this debt, the accused had given a
cheque dated 05.07.2017, which, when presented by the
complainant was dishonoured on the ground "payment stopped".
The complainant issued a statutory notice dated 14.07.2017, in
response to which, the accused issued a reply notice dated

29.07.2017 repudiating the debt and alleging that the complainant's representative has stealthily taken away the cheque from the shop of the accused. In this regard, the accused gave a police complaint against the complainant on 08.07.2017, when he came to know that the cheque was dishonoured. The complainant also gave a police complaint against the accused and the police had conducted enquiry and closed the complaint. While so, the complainant has initiated a prosecution in STC No.2071 of 2017 under Section 138 of the Negotiable Instruments Act before the Judicial Magistrate, Palladam, against the accused, for quashing which, the accused is before this Court.

4. Heard Mr.C.Prabakaran, learned counsel for the accused.

5. Mr.C.Prabakaran, learned counsel submitted that the entire prosecution is a mala fide exercise of power, inasmuch as the accused was having business dealings with the complainant and that the accused had made payments to the complainant by cheque nos.4001 dated 12.01.2016 and 4003 dated 13.01.2016, whereas, the impugned cheque bears the no.4002, which has been stealthily filled up by the representative of the complainant subsequently on 05.07.2017 and that is why the same does not find place between 12.01.2016 and 13.01.2016. He also submitted that the complainant had given a false complaint against the accused and similarly the accused had also given a complaint against the complainant for having stolen the said cheque and an FIR has been registered against the complainant.

6. Be that as it may, the fact remains that the impugned cheque bears the signature of the accused. It is the specific case of the accused in the reply notice that the representative of the complainant became very affectionate and close to the accused and taking advantage of their friendship, the representative had stolen the cheque. In the opinion of this Court, this is a disputed question of fact which cannot be gone into in a quash petition under Section 482 Cr.P.C. Hence, it is open to the petitioner to raise this point before the trial Court and the burden under Section 139 of the Negotiable Instruments Act can be discharged by the accused by preponderance of probability and not by proof beyond reasonable doubt as held by the Supreme Court in Rangappa vs. Sri Mohan [(2010) 11 SCC 441].

Accordingly, 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/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate,
Palladam.

+1cc to Mr.C.PRABAKARAN, Advocate, S.R.No. 24651

CrI.O.P. No.10132 of 2018

TR(20/04/2018)



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