

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP.No.12278 of 2018  
and  
Crl.M.P.Nos.6516 & 6517 of 2018

Mr.C.R.Rajesh

... Petitioner

Vs

M/s.Jaibala Homz Private Ltd.,  
Rep by its Managing Director,  
Mr.B.R.Balasubramanian,  
No.54/44, Jeevan Beema Nagar,  
Anna Nagar West Extension,  
Chennai - 600 101.

....Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for records in C.C.No.389 of 2017 on the file of the Court of Judicial Magistrate (Fast Track), Ambattur and quash the same.

For Petitioner : Mrs.R.T.Shyamala

O R D E R

This Criminal Original Petition has been filed seeking a direction to call for records in C.C.No.389 of 2017 on the file of the Judicial Magistrate (Fast Track), Ambattur and quash the same.

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

3. The complainant has initiated a prosecution in C.C.No.389 of 2017 under Section 138 of the Negotiable Instruments Act, 1881, on the file of the Judicial Magistrate, Fast Track Court, Ambattur, challenging which, the accused has filed the present quash petition.

4. Heard Ms.R.T.Shyamala, learned counsel appearing for the petitioner/accused, who submitted that the complainant had entered into a construction agreement with the accused. However, the complainant had failed to maintain the quality of the construction and also deviated from the plan, on account of which, there was misunderstanding between the complainant and the accused. Therefore, the petitioner/accused had issued a

notice dated 19.10.2017 to the bank for stop payment towards the impugned cheque.

5. In the considered opinion of this Court, the disputed questions of fact cannot be gone into in a quash petition filed under Section 482 Cr.P.C.,. Hence, this petition is closed with liberty to the petitioner to raise all the points before the trial Court.

6. At this juncture, the learned counsel appearing for the petitioner/accused submitted that the personal appearance of the petitioner/accused may be dispensed with before the trial Court.

7. Accepting his submission, the petitioner is directed to appear before the trial Court within a period of two weeks from the date of receipt of a copy of this order. On his appearance, he shall file a petition under Section 436(1) Cr.PC, for bail and the trial Court shall release him on bail on the same day, on he executing a bond for Rs.10,000/- with two sureties. Thereafter, the petitioner shall appear before the trial Court for receiving the complaint, for questioning under Section 251 Cr.PC, at the time of questioning under Section 313 Cr.P.C. and at the time of passing judgment. For the other hearings, the petitioner shall file a petition before the trial Court under Section 317 Cr.PC., giving an undertaking that he will not dispute his identity and that the counsel named by him in the affidavit will cross-examine the prosecution witnesses on the day he is examined-in-chief, as held by the Supreme Court in Vinod Kumar vs. State of Punjab [2015(1) MLJ (Cr1) 288]. On such a petition being filed, the trial Court may liberally consider the same. If the accused adopts any dilatory tactics, it is open to the trial Court to insist upon his presence and remand him to custody as laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. If the accused absconds, the trial Court shall direct registration of an FIR against him under Section 229-A IPC. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dh/mk

TO:

The Judicial Magistrate,  
Fast Track Court,  
Ambattur.

+1cc to Mrs.R.T.Shyamala, Advocate in sr.no.31030

Cr1.OP.No.12278 of 2018

ppa(co)  
nr 16/05/2018



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