

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2018

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

Crl.O.P. No.16974 of 2018

and

Crl.MP.Nos.8772 & 8773 of 2017

P.Seralathan

...Petitioner

vs.

Anush Petro Agency
Rep. by its Proprietor
Mr.V.Naveen Kumar

...Respondent

Criminal Original Petition filed under Section 482, Cr.P.C. to call for the records pertaining to C.C.No.791 of 2018 on the file of the Metropolitan Magistrate, Fast Track Court No.IV, G.T. Chennai and quash the same.

For petitioner : Mr.M.Prabakar

ORDER

This Criminal Original Petition has been filed to call for the records pertaining to C.C.No.791 of 2018 on the file of the Metropolitan Magistrate, Fast Track Court No.IV, G.T. Chennai 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 he is running a petrol bunk in the name and style of "Anush Petrol Agency" at No.18, Jeevarathinam Salai, Royapuram, Chennai-13 and that the accused is the owner of a fishing boat; that the accused and his mother used to purchase diesel from the complainant; that the accused and his mother owed Rs.8,50,000/-; that the mother of the accused has admitted the liability in writing; that the accused, in discharge of the said liability, issued two cheques dated 17.11.2017 to the complainant; that the complainant presented both the cheques on 18.11.2017; that the cheques were

returned unpaid; that the complainant issued a notice dated 28.11.2017; that the accused received the notice, but, requested the complainant to re-present the cheques; that the complainant re-presented the cheques on 22.12.2017; that both the cheques were dishonoured; that the complainant issued a legal notice dated 11.01.2018 under Section 138 of the Negotiable Instruments Act, 1881 (for short "the NI Act"; that the accused neither replied to the notice nor returned the money. Hence, the complainant initiated a prosecution in C.C.No.791 of 2018 under Section 138 of the NI Act, and the same is now pending on the file of the Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai, for quashing which, the accused is before this Court.

4. Heard Mr.M.Prabakar, learned counsel for the accused, who submitted that there is no privity of contract between the accused and the complainant inasmuch as the boat was purchased by the accused only on 22.12.2016 and therefore, there is no way by which the accused would have filled diesel in the petrol bunk of the complainant. He also submitted that the complainant is not having any document to show his debt, which is a sine qua non for fastening criminal liability.

5. There is much force in the submission of the learned counsel for the accused. However, disputed questions of fact cannot be gone into in a quash petition in the light of the law laid down in S.Krishnamoorthy Vs. V.Chellammal [(2015) 4 Scale 371]. Under Section 138 of the NI Act, a cheque can be issued by a person in respect of discharging the debt of another person. However, it is the duty of the complainant to first prove the debt beyond reasonable doubt and only thereafter, the burden shifts on the accused under Section 138 of the NI Act, to dislodge the burden. As rightly pointed out by the learned counsel for the accused, non-issuance of the reply notice, by itself, cannot lead to an inference that the accused has admitted the liability. Since there are disputed questions of fact, this petition is closed, with liberty to the petitioner to raise all the points before the trial Court.

6. The learned counsel for the accused sought permission of this Court to dispense with the personal appearance of the petitioner 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.5,000/- 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 they are 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. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

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To

The Metropolitan Magistrate,
Fast Track Court No.IV,
Geroge Town, Chennai.

+2cc to Mr.P.Rajalingam, Advocate SR.No.42604

Cr1.O.P. No.16974 of 2018

AD(CO)
GN(23/07/2018)

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