

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.No.19810 of 2018

and

CRL.M.P.Nos.10527 and 10528 of 2018

R. Kalaiselvi ... Petitioner/ Accused

Vs

K. Nagaraj ... Respondent/Complainant

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records and quash the proceedings pending against the petitioner in C.C.No.726 of 2017 on the file of the Fast Track Court No.2, Magistrate Level, Coimbatore.

For Petitioner : Mr. K. Balasubramaniam

O R D E R

This Criminal Original Petition has been filed to call for the records and quash the proceedings pending against the petitioner in C.C.No.726 of 2017 on the file of the Fast Track Court No.2, Magistrate Level, Coimbatore.

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 was introduced to the accused by one Mrs. Jayalakshmi, Wife of Manickam; at the request of the accused, he gave a hand loan of Rs.4,00,000/- on 10.04.2015, agreeing to repay the said amount with interest; the accused issued a demand pro-note in favour of the complainant; when the accused did not make any payment towards interest or principal, the complainant started pressurizing Jayalakshmi; in turn, Jayalakshmi started to pressurise the accused to settle the matter with the complainant; therefore, the accused issued four post-dated cheques of Rs.1,00,000/- each; the complainant presented the first cheque, dated 06.07.2016 for Rs.1,00,000/- bearing No.894799, on 08.07.2016 and the said cheque was returned on 11.07.2016, on the ground 'stop payment'; the complainant

presented the second cheque bearing No.894800, on 08.08.2016, which was also returned with an endorsement 'stop payment'; the complainant has issued a statutory notice dated 22.08.2016, for which, the accused gave a reply dated 23.08.2016; since the accused did not come forward for making payment, the complainant has lodged a prosecution in C.C.No.726 of 2017 and the same is now pending on the file of the Fast Track Court-II, Magisterial Level, Coimbatore, under Section 138 of the Negotiable Instruments Act, for quashing which, the accused is before this Court.

4. Heard Mr.K.Balasubramaniam, learned counsel for the petitioner who submitted that the cheques were issued only to Jayalakshmi and not to the complainant. He also submitted that some amount has been paid to Jayalakshmi, however, Jayalakshmi has misused the impugned cheques. He also submitted that the accused has given a police complaint against Jayalakshmi and Manickam to the Police, on which, no action was taken and therefore, the accused filed a petition under Section 156(3) Cr.P.C., pursuant to which, a case in Thudialur Police Station Crime No.442 of 2017 has been registered against the said Manickam, Jayalakshmi, Nagaraj and Rajasekaran. In such view of the matter, learned counsel for the petitioner submitted that the entire prosecution is an abuse of process of law.

5. In the opinion of this court, in a proceeding under Section 482 Cr.P.C., this Court cannot go into the disputed questions of fact, in the light of the law laid down by the Supreme Court in S.Krishnamoorthy Vs. V.Chellammal (2015) 4 Scale 371. Under such circumstances, this petition is closed with liberty to the accused to raise all the points before the trial Court, since there are prima facie materials against the accused for the trial to proceed.

6. At this juncture, the learned counsel for the accused sought permission of this Court to dispense with the personal appearance of the accused.

7. Accepting his submission, the accused 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.P.C., 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 charge sheet, for questioning under Section 251 Cr.P.C., 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.P.C., 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.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

gsi/kal

To

1. The Judicial Magistrate No.2
Fast Track Court,
Magistrate Level,
Coimbatore.
2. The Public Prosecutor,
High Court of Madras,
Chennai.

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TR(30/08/2018)

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