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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2018

CORAM :

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Crl.O.P.No.24847 of 2018

and

Crl.M.P.Nos.14027 & 14030 of 2018

Murugan

.. Petitioner

Vs

Thiripathi

.. Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.185 of 2018 pending on the file of the Judicial Magistrate Court, Omalur, Salem District and quash the complaint.

For Petitioner : Mr.R.Balakrishnan

O R D E R

This Criminal Original Petition has been filed to call for the records in .185 of 2018 pending on the file of the Judicial Magistrate Court, Omalur, Salem District and quash the complaint.

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

3.It is the case of the complainant that the accused borrowed Rs.5,00,000/- (Rupees Five lakhs only) on 13.02.2018 and also executed a promissory note in favour of the complainant for the said amount. The accused paid interest for sometime and thereafter, when the complainant demanded repayment of the principal amount, the accused gave the impugned cheque dated 14.03.2018 for Rs.5,00,000/-. The complainant presented the cheque on 14.03.2018 and the same was returned on 19.03.2018 with a memo stating that "40.drawer sign not as per mandate". The complainant issued a statutory notice to the accused on 27.03.2018. Since, the accused did not repay the amount, the complainant has now initiated the proceedings in C.C.No.185 of 2018 before the Judicial Magistrate Court, Omalur, Salem District, under Section 138 of the Negotiable Instruments Act, for quashing which, the accused is before this Court.



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4. Heard Mr.R.Balakrishnan, learned counsel for the accused, who submitted that the complainant had illegally taken away the cheque, belonging to the accused and has filled it and presented the same. He further contended that the accused had undergone a hip joint surgery and is under treatment.

5. In the opinion of this Court, disputed questions of fact cannot be gone into, in a quash 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 v. Chellammal [2015 (4) Scale 371].

6. Hence, this Criminal Original Petition is dismissed with liberty to the petitioner/accused to raise all the points before the trial Court, during trial. Consequently, connected Miscellaneous Petitions are closed.

7. At this juncture, the learned counsel for the accused requested that the presence of the accused before the trial Court may be dispensed with.

8. Taking into consideration the ground that the accused had undergone hip joint surgery, the accused is directed to appear before the trial Court within two weeks from the date of receipt of a copy of this order and he shall file an application under Section 436 Cr.P.C. for bail, and on such application being made, the trial Court shall release him on bail on the same day, on executing a bond for Rs.10,000/- with two sureties, and on filing 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]. The accused is directed to appear before the trial Court for receiving the copies under Section 207 Cr.P.C., while framing the charge 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, he shall file a petition before the trial Court under Section 317 Cr.P.C. and the same may be considered favourably. 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 v)

//True Copy//

Sub Assistant Registrar



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To

1.The Judicial Magistrate,
Omalur,
Salem District.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Balakrishnan , Advocate SR.No. 72557

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ASK(04/12/2018)