



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.10.2018

CORAM

WEB COPY

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CRL.O.P.(MD) No.5941 of 2017

and

Crl.M.P.(MD)No.4024 and 4025 of 2017

S.Anand

... Petitioner / Accused

Vs

Vemban

... Respondent / Complainant

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, to call for the records in S.T.C.No.23 of 2017 on the file of the Judicial Magistrate, Tiruchendur and quash the same.

For Petitioner : Mr.G.Murugendran

For Respondent : Mr.R.Anand

ORDER

This petition has been filed to quash the proceedings in S.T.C.No.23 of 2017 on the file of the Judicial Magistrate, Tiruchendur.

2.This petition has been filed on the ground that the complaint does not contain any material with regard to the actual money transaction that happened between the petitioner and the

respondent. The further ground that has been taken in this petition is that the cheque was returned with an endorsement the "Drawer Signature Differs". According to the learned counsel for the petitioner this will not fall within the conditions stipulated under Section 138 of Negotiable Instruments Act. According to the learned counsel for the petitioner, the cheque was not returned on the ground of insufficient funds. Therefore, the learned counsel for the petitioner would submit that the complaint itself before the Court below is liable to be quashed.

3.The learned counsel for the respondent would submit that the grounds that have been raised by the petitioner are all factual in nature. The learned counsel for the respondent also pointed to the allegation made in the complaint, wherein, it has been stated that the petitioner had wantonly put a different signature, knowing fully well that he did not have sufficient funds in the bank account and



that the cheque itself will be returned on the ground of variance in signature. According to the learned counsel for the respondent this ground can be raised only before the Court below in the course of proceedings.

4.This Court has carefully considered the submission made on either side.

5.The main ground that has been raised by the learned counsel for the petitioner is that the cheque was returned on the ground of "Drawers Signature Differs". Therefore, this will not fall within the requirements of Section 138 of Negotiable Instruments Act.

6.The petitioner had put a different signature in the cheque and the cheque was returned. The drawer of the cheque cannot turn around and say that no offence has been made out since the same has been returned for a different signature. In the course of trial, if it is found that the drawer of the cheque did not have sufficient funds during the relevant point of time and even if the cheque has been returned for different signature, in the considered view of this Court, it will amount to an offence under Section 138 of Negotiable Instruments Act. Therefore, this Court is not in agreement with the submissions made by the learned counsel for the petitioner. It is left open to the petitioner to raise all these grounds before the Court below and the Court below shall consider the same on its own merits and in accordance with law.

7.In the result, this criminal original petition is dismissed and the Court below is directed to complete the proceedings within a period of three months from the date of receipt of a copy of this order and report before this Court after completion of the proceedings. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-I)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1.The Judicial Magistrate,
Tiruchendur.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.G.Murugendran, Advocate, Sr.No.93769.

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