



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE **N.ANAND VENKATESH**

CrI.O.P.[MD].No.22835 of 2016

and

CrI.M.P(MD)Nos.11970 and 11971 of 2016

N.Mohan

: Petitioner/Accused

Vs.

R.Madhu

: Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C., to quash the private complaint in C.C.No.240 of 2016 on the file of the Judicial Magistrate Court No.I, (Fast Track Court) Karur.

For Petitioner

: Mr.V.Singan

For Respondent

: Mr.V.Sitharanjandas

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.240 of 2016 on the file of the learned Judicial Magistrate No.I, (Fast Track Court) Karur.

2.The learned counsel for the petitioner would submit that the petitioner herein had filed a suit in O.S.No.1255 of 2014 on the file of the learned District Munsif Court, Trichirappalli, against one P.Suresh, seeking for a relief of mandatory injunction directing the defendant to return the cheques referred in the suit schedule. The learned counsel would further submit that out of the cheques that have been described in the suit schedule, only two cheques, which are found as item Nos.3 and 4 in the suit schedule, are the subject matter of the criminal complaint filed under Section 138 of the Negotiable Instruments Act, which is pending in C.C.No.240 of 2018.

3.The learned counsel for the petitioner would further submit that the said suit is pending. Subsequent to the filing of the suit, the defendant, namely, P.Suresh made the present respondent, who is the complainant in the 138 proceedings, to file another suit in O.S.No.76 of 2015 before the District and Sessions Judge, Trichirappalli, for recovery of money, based on the cheque, which is alleged to have been given by the petitioner. Therefore, the learned counsel would submit that filing of the present complaint based on the cheques that have been used by the respondent is a clear abuse of process of court and the decision in the suits that are pending would have a bearing on the criminal complaint that has been filed by the respondent.



4.The learned counsel for the respondent would submit that the contentions of the petitioner are all question of fact. Therefore, the learned counsel for the respondent would submit that the facts that have been raised in this petition cannot be a ground to quash the proceedings pending before the court below.

5.This court has carefully considered submissions made on either side.

6.From the documents, it is seen that the petitioner has filed a suit against one P.Suresh for the relief of mandatory injunction to return back the cheques and two of the cheques in the suit are the subject matter of the present C.C.No.240 of 2016. It is also seen that the respondent has filed a suit against the petitioner in O.S.No.76 of 2015 for recovery of money based on the very same cheques which are the subject matter of C.C.No.240 of 2016. Therefore, these are facts, which cannot be decided before this court by exercising its jurisdiction under 482 of Cr.P.C. All the issues that have been raised here, can be raised by the petitioner as a defence in the C.C., that is pending on the learned Judicial Magistrate No.1, (FTC) Karur.

7. This Criminal Original Petition is dismissed and the petitioner is at liberty to raise all the grounds that have been raised in this Criminal Original Petition before the court below in 138 proceedings. Since the C.C., is of the year 2016, there shall be a direction to the learned Judicial Magistrate No.1, (FTC)Karur to complete the proceedings within a period of four months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The Judicial Magistrate Court No.I,
(Fast Track Court) Karur.

+1cc to Mr.V.Sitharanjandas, Advocate Sr.No.81583

DAS

VB/PM/SAR1/03.10.2018/2P/3C

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