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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2019

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.10406 of 2019
and Crl.M.P Nos.5390 & 5391 of 2019

Sathiya Murthi

Petitioner

vs.

Kesava Narayanan

Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.5476 of 2016 on the file of the Fast Track III Magistrate Level, Saidapet, Chennai and quash the same.

For Petitioners : M/s.N.A.Hussainy
For Respondents : No Appearance

O R D E R

This petition has been filed seeking to quash the proceedings in C.C.No.5476 of 2016, pending on the file of the Fast Track Court III Magistrate Level, Saidapet, Chennai.

2. The respondent has filed the complaint against the petitioner for an offence under Section 138 of the Negotiable Instrument Act. On reading of the allegations made in the complaint, it is seen that the cheque has been returned with an endorsement "05 - Kindly contact Drawer - Drawee Bank and please present again".

3. The learned counsel for the petitioner submitted that the reason for which a cheque has been returned will not attract the offence under Section 138 of the Negotiable Instruments Act. The learned counsel submitted that the cheque was not dishonoured for want of funds or on the ground that the payment has been stopped. The cheque was only returned on the ground that "05 - Kindly contact Drawer - Drawee Bank and please present again". Therefore, the respondent ought to have clarified with the bank and must have presented the cheque again. Without doing so, the respondent has proceeded to file a



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complaint for an offence under Section 138 of the Negotiable Instruments Act. It is, according to the learned counsel for the petitioner, an abuse of process of Court and the same requires interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

4. The respondent has been served with notice and the respondent does not appear either in person or through counsel. The name of the respondent has also been printed in the cause list. Therefore, this Court proceeds to deal with this case on merits.

5. The only ground that has been raised by the learned counsel for the petitioner is that, the cheque has been returned by the bank by requesting the respondent to contact the Drawer - Drawee Bank and present it again. The respondent without complying with the requisit has proceeded to file the complaint for an offence under Section 138 of the Negotiable Instrument Act. It is true that the Hon'ble Supreme Court of India has held that, for whatever reasons a cheque is returned, a complaint can be maintained under Section 138 of the Negotiable Instruments Act and if such a purposeful interpretation is not given to the provision, it will defeat the beneficial legislation which wants to penalize the persons who fail to honour a cheque, after issuing the same.

6. However, in the facts of the present case, the concerned bank has not returned the cheque on the ground of defect. It has been returned by directing the respondent to contact a concerned bank and present it again. In short, this endorsement cannot be held to be dishonour of cheque. In the considered view of this Court, the respondent without complying with the requirements of the bank, ought not to have proceeded to file a complaint under Section 138 of the Negotiable Instruments Act. The Court below went wrong in taking cognizance of the complaint.

7. In the result, proceedings in C.C.No.5476 of 2016 is hereby quashed, accordingly this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar



ssr

To

1. The Fast Track III Magistrate Level,
Saidapet, Chennai.

+1cc to M/s.N.A.Hussainy , Advocate SR.No. 63549

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A.SK(06/09/2019)