



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.08.2021

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

Crl.OP.No.25341/2016
[Video Conferencing]

K.Murugan ... Petitioner

Versus

M.Jayaraj ... Respondent

Prayer : - Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records of the criminal proceedings pending against the petitioner in CC.No.507/2016 on the file of the learned Judicial Magistrate No.II, Coimbatore and quash the same.

For Petitioner : Mr.P.M.Duraiswamy
For Respondent : Mr.C.D.Johnson

ORDER

- (1) The 2nd accused in CC.No.507/2016, who is facing a charge under Section 138 of the Negotiable Instruments Act, 1881, has filed the present petition seeking to quash the further proceedings.
- (2) The complaint had been given by the respondent herein, N.Jayaraj, against two accused viz., Mrs.M.Kavitha and her husband Mr.K.Murugan. The 2nd accused K.Murugan is before this Court.
- (3) A cheque bearing No.443873 dated 01.03.2016 drawn on the State Bank of Hyderabad, Kalapatti Branch, Coimbatore, for a sum of Rs.6,00,000/- had been issued only by the 1st accused/M.Kavitha. The present petitioner happened to be her husband and for that one reason, he has also been shown as an accused in the said Calendar Case.
- (4) Incidentally, the present petitioner had issued another cheque for good measure to the same defacto complainant for a sum of Rs.6,48,000/- which was drawn on Karur Vysya Bank, Ramanathapuram Branch, Coimbatore which was dated 02.04.2016 and which bears No.000758. Independent proceedings have been initiated by the defacto complainant with respect to the return of the said cheque. Insofar as the present Calendar Case is concerned, the cheque had been issued only by the 1st accused, from the account of the 1st



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accused and towards part of the loan received by both the accused. With respect to the other part, the present petitioner herein had issued another cheque as stated above for Rs.6.48,000/-. He is facing prosecution in view of the fact that, that cheque had also been returned by the Bankers. But, adding him as an accused for a cheque issued by his wife, cannot be sustained. It cannot stand the scrutiny of this Court.

- (5) This is one point which is taken up by Mr.P.M.Duraiswamy, learned counsel for the petitioner/2nd accused who expressed the grievance that though it is evident on the face of the cheque that the present petitioner had neither signed it nor was it issued from the account in which he had some semblance of relationship, still he had been roped in as an accused.
- (6) This contention has been very strongly opposed by Mr.C.D.Johnson, learned counsel for the respondent/defacto complainant who still insisted that as a husband, the petitioner has a duty to join hands with his wife even to face prosecution as an accused in a criminal case.
- (7) That cannot be permitted to stand.
- (8) The Criminal Original Petition stands allowed and the case in CC.No.507/2016 on the file of the learned Judicial Magistrate No.II, Coimbatore, is quashed insofar as the petitioner / K.Murugan / 2nd accused is concerned. Let the learned Judicial Magistrate No.II, Coimbatore, proceed with the Calendar Case as against the 1st accused/M.Kavitha.
- (9) A request is placed by Mr.C.D.Johnson, learned counsel for the respondent/defacto complainant to give a direction to the said learned Magistrate to dispose of the Calendar Case within a reasonable period of time.
- (10) The matter had been stayed for the past five years and after five years, if this Court issues such a direction, the learned Magistrate would wonder as to the reasonableness of such a direction.
- (11) Therefore, I am confident that the learned Magistrate, even without any direction, would take up the responsibility of disposing of the said Calendar Case within a reasonable time and without affording unnecessary adjournments for either the complainant or the accused.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

AP



To

1.The Judicial Magistrate No.II
Coimbatore.

2.The Public Prosecutor
High Court, Madras.

Cr1.OP.No.25341/2016

PCH (CO)
GN (20/09/2021)