

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.7535 of 2021 and
Crl.M.P.Nos.4987 & 4988 of 2021

S.Mohammed Ayub Khan @ I.Mohammed Ayub Khan ... Petitioner

Versus

L.Ramamohan Reddy ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the entire records related to the case in S.T.C.No.108 of 2020 on the file of the learned Fast Track Court at Magisterial Level, Ambattur, Tiruvallur District and quash the same.

For Petitioner : Mr.J.Hariharan

ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.108 of 2020 on the file of the Fast Track Court at Magisterial Level, Ambattur, Tiruvallur District.

2.The case of the respondent is that the petitioner introduced himself as business man carrying on the business in Abudubai and also in other parts of the world. The petitioner met the respondent along with one Asokan and sought the amount of Rs.20 lakhs as loan for business purpose. The respondent believed the request of the petitioner to be genuine and promised to help on condition that Asokan shall guarantee the repayment of the amount. Initially, the amount of Rs.5,00,000/- as a loan has been paid to the petitioner, for which he issued a cheque for AED 29,500/-, dated 27.09.2015 and thereafter, paid Rs.10 lakhs to the petitioner, for which the petitioner issued a cheque for AED 59,000/-, dated 30.12.2015. When the respondent presented the cheques for collection, the same were returned with an endorsement that 'Account Closed'. The respondent had issued a legal notice to the petitioner on 09.02.2016 to repay the cheque amount. But the petitioner has sent a reply notice dated 15.02.2016 with false allegation and failed to pay the cheque amount. Hence, he filed the private complaint before the

learned Fast Track Court at Magisterial Level, Ambattur, Tiruvallur District in S.T.C.No.108 of 2020.

3.The learned counsel for the petitioner submitted that the entire allegations does not attract the offence under Section 138 of the Negotiable Instruments Act and there is no cause of action for the complaint. He further submitted that the complaint is totally bereft of any particulars regarding the date on which the cheques were issued, mode of borrowal of loan amount, place where the cheques were issued. All the above facts are material to decide the case as the cheque belongs to a Foreign Bank and not a Bank within India. Since the cheques belonging to a Foreign Bank, the cause of action does not arise.

4.It is seen that the grounds that have been raised by the learned counsel for the petitioner is purely factual in nature and it has to be decided only during the trial and this Court cannot go into the same in exercise of its jurisdiction under Section 482 of Cr.P.C. It is left open to the petitioner to raise these grounds before the trial Court and the trial Court shall consider the same on its own merits and in accordance with law. Hence, this Court is not inclined to quash the proceedings against the petitioner.

5.At this stage, the learned counsel for the petitioner seeks dispensed with of the appearance of the petitioner before the trial Court, since he aged about 61 years and undergone heart surgery.

6.On the plea of the learned counsel for the petitioner, it is made clear that the petitioner is to file a petition under Section 317 Cr.P.C., before the trial Court and also affidavit stating that he would not dispute his identity during the trial; cooperate with the trial; cross examine the witnesses then and there without seeking any unnecessary adjournments and he would not be cause for delay of the trial. The trial Court is to consider the petition under Section 317 Cr.P.C., liberally. If the above undertaking is not followed by the petitioners, the trial Court is directed to secure the accused and conduct the trial.

7.In the result, this Criminal Original Petition stands dismissed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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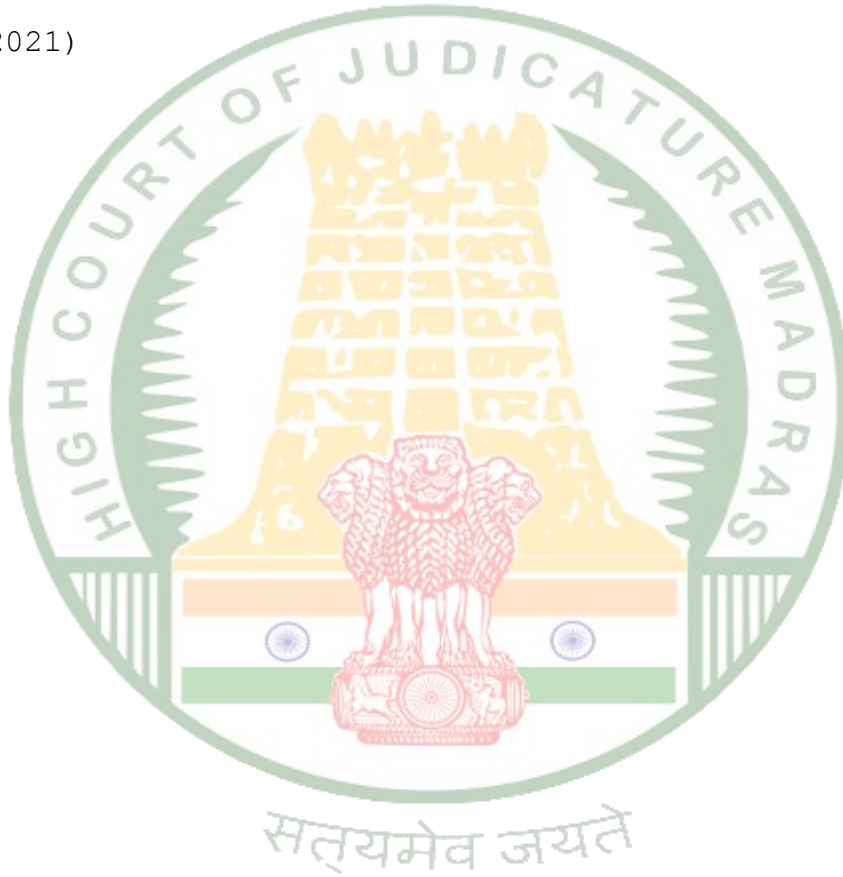
To

The Fast Track Court at Magisterial Level,
Ambattur, Tiruvallur District.

+1cc to M/s.K.V.Law Firm, Advocate, S.R.No.25400

CRL.O.P.No.7535 of 2021

LN (CO)
CB (18/06/2021)



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