



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2021

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CrI. O.P. No.5187 of 2017

and

CRL.M.P.No.3855 and 3856 of 2017

Mrs.Gerosa Yob

...Petitioner/Accused No.2

Vs.

M/s. H.R.Textiles,
Prop. P.Venkatesh,
Door No:46, GKD Nagar,
Pappanaickenpalayam,
Coimbatore - 641 037.

.... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to quash the final report filed by the first respondent herein for an alleged offences under Section 138 of Negotiable Instruments Act against the petitioner and pending trial in C.C.No.308/2016 on the file of Judicial Magistrate No.5, Coimbatore.

For Petitioner : Mr.J.Nandagopal

For Respondent : Mr.S.Mukunth
for M/s.Sarvabhauman Associates

ORDER

This Criminal Original petition has been filed to quash the final report filed by the first respondent herein for an alleged offence under Section 138 of Negotiable Instruments Act against the petitioner and pending trial in C.C.No.308/2016 on the file of Judicial Magistrate No.5, Coimbatore.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. The main contention of the learned counsel for the petitioner is that the cheque has not been signed by the petitioner. Since it is a joint account, the signature of the



petitioner has been forged by her husband.

4. Having gone through the materials available on record, this Court is of the considered view that when a complaint is filed under Section 138 of the Negotiable Instruments Act, this Court cannot go into the question of fact as to the validity of the issuance of cheque and whether the cheque has been issued towards a legally enforceable debt or not. Those issues are factual and triable issues, which have to be decided only by way of a full fledged trial and not otherwise under Section 482 of Code of Criminal Procedure. The above view of this Court is fortified by the decision of the Hon'ble Supreme Court in STATE OF HARYANA AND OTHERS Vs. BHAJANLAL AND OTHERS 1992 Supp (1) Supreme Court Cases 335, wherein the Hon'ble Supreme Court has held that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection.

5. In such a view of the matter, this Court is of the view that quashing of the case cannot be considered, at this point of time. Accordingly, this Criminal Original Petition is dismissed. It is for the petitioner to take all his defence before the trial Court. The accused is directed to appear before the trial Court within two weeks from the date of receipt of a copy of this order and file an application under Section 436 of Code of Criminal Procedure. On such filing of the application, trial Court is directed to release the petitioner on bail on the same day on executing a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) each with two sureties. If thereafter, he absconds, a fresh FIR can be registered under Section 229 A of the Indian Penal Code. Consequently, connected Criminal Miscellaneous Petition is closed.

6. In view of the above, this Criminal Original Petition is dismissed. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Msv



TO

1.The Judicial Magistrate No.5,
Coimbatore.

2.do Through The Chief Judicial Magistrate,
Coimbatore.

+lcc to Mr.Sarvabhauman Associates, Advocate SR.No.57505

Crl. O.P. No.5187 of 2017
and
CRL.M.P.No.3855 and 3856 of 2017

PA(CO)
GN(30/11/2021)