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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.11.2021

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CrI. O.P. No. 6209 of 2017
and CrI.M.P.No.4613 &4614 of 2017

M.Raja . . . Petitioner

Versus

S.Jayapal . . . Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records and quash the complainant in C.C.No.5332 of 2016 on the file of learned XXIII Metropolitan Magistrate, Saidapet, Chennai.

For Petitioner : Mr.C.Prabhakaran

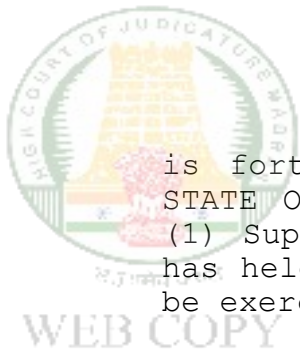
O R D E R

This Criminal Original Petition has been filed to call for the records and quash the complainant in C.C.No.5332 of 2016 on the file of learned XXIII Metropolitan Magistrate, Saidapet, Chennai.

2. The case of the defacto complainant is that the accused has borrowed a sum of Rs.21,50,000/- and issued a cheque towards the above debt. When the cheque was presented for encashment, the same was dishonoured for the reason "insufficient funds". After complying the statutory notice, the defacto complainant has filed the complaint.

3.Learned counsel for the petitioner submitted that the main ground on which the quashment of proceedings is sought for before this Court is that there is no legally enforceable debt.

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 Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

msv/nr

To

1. The XXIII Metropolitan Magistrate,
Saidapet, Chennai.
2. The Chief Judicial Magistrate
Egmore Chennai.

+1cc to Mr.C.Prabhakaran, Advocate, S.R.No.61584

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KSM(CO)
CT 09/12/2021