



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.7247 OF 2017

&

CRL.M.P.NO.5233 OF 2017

William Francis

...Petitioner/Accused

Vs

E.Kosalram

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records and quash the proceedings in C.C.No.1377 of 2016 on the file of the learned VII Metropolitan Magistrate, George Town, Chennai.

For Petitioner : Mr.S.Natarajan

For Respondent : Mr.R.Veeramani

O R D E R

This petition have been filed for quashing the proceedings in C.C.No.1377 of 2016 on the file of the learned VII Metropolitan Magistrate, George Town, Chennai.

2. The main contention of the petitioner is that subject matter of the cheque was issued to one L.Iruthayasami. Originally, there was an understanding between the parties and certain documents were executed. Therefore, the present cheque was never issued to the respondent herein. Hence, submitted that the prosecution has to be quashed. Though xerox copies of the documents have been filed in the typed set to show that there was some understanding between the parties, the counsels have not properly understood the scope of Section 482 of Criminal Procedure Code.



3. 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. 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.

4. Accordingly, this Criminal Original Petition is dismissed with a cost of Rs.5,000/- (Rupees Five Thousand Only) payable by the petitioner to the Chief Justice Relief Fund and receipt of the same shall be produced along with the seeking bail. The lower Court is directed to complete the trial within a period of six months. 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.

Sd/-

Assistant Registrar(CS-VII)

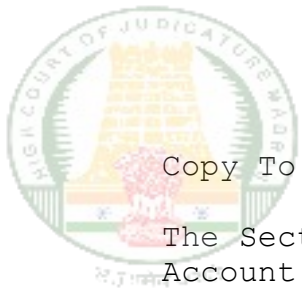
//True Copy//

Sub Assistant Registrar

vrc/kbs

To

The VII Metropolitan Magistrate,
George Town, Chennai.



Copy To

The Section Officer,
Account Section,
High Court, Madras.

+1cc to Mr.R.Veeramani, Advocate, S.R.No.59610

Cr1.O.P.No.7247 of 2017 &
Cr1.M.P.No.5233 of 2017

MG (CO)
RLP (01/12/2021)