



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.11.2021

C O R A M

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CrI. O.P. No. 4270 of 2017
and
CrI.M.P.No.3210 of 2017

M.Mukesh,
S/o.Mohan

...Petitioner/Accused

Versus

Mr.N.Jayaraman,
S/o.late R.Narayanasam

...Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in respect of STC No.321 of 2016 on the file of Judicial Magistrate - II at Poonamallee and quash the same.

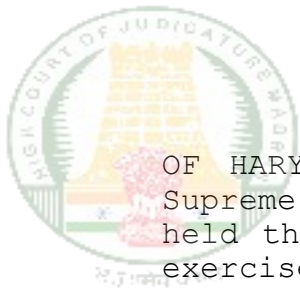
For Petitioner : Mr.C.R.Ezhilkumar
for M/s.Majestic Law Firm

O R D E R

(This case has been heard through video conference)

This Criminal Original Petition has been filed to quash the private complaint filed under Sec.138 and 142 of Negotiable Instruments Act pending against the petitioner in STC.No.321 of 2016 on the file of the learned Judicial Magistrate No.II, Poonamallee.

2. 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.

WEB COPY

3. 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.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

rpp

To

The Judicial Magistrate No.II,
Poonamallee.

CrI. O.P. No. 4270 of 2017
and
CrI.M.P.No.3210 of 2017

RSI[co]
NSK 07/12/2021