



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2021

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRL. O.P. NO.8328 OF 2017

AND

CRL.M.P.NOS.5981 & 5982 OF 2017

R.Syed Khayum

...Petitioner / Accused

Vs.

M.Jaishankar

...Respondent / Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records in S.T.C.No.20 of 2017 on the file of the learned Judicial Magistrate No.II Hosur, Krishnagiri District and quash the proceedings as against the petitioner.

For Petitioner : Mr.Sulthan Basha
for Mr.D.N.Dhurgasha

For Respondent : Mr.A.Balamurugan

ORDER

This Original Petition has been filed to call for the records in S.T.C.No.20 of 2017 on the file of the learned Judicial Magistrate No.II Hosur, Krishnagiri District and quash the proceedings as against the petitioner.

2. The case of the defacto complainant is that the accused has borrowed a sum of Rs.20,00,000/- and issued a cheque dated 18.07.2016 towards the above debt. When the cheque was presented for encashment, the same was dishonoured for the reason "payment stopped by the drawer" and the same was returned to the complainant along with a memo dated 2.8.2016 and immediately on the receipt of the said cheque along with a memo, the complainant had tried to contact the accused for payment, but every time, the accused avoided the complainant with some or other reason. 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 and there is no privity of contract between the parties.

4. Having gone through the materials available on record, this Court is of the considered view that whether there is privity of contract between the petitioner and



respondent or not is as a matter of evidence and it cannot be gone at this stage. 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 with a direction to the Court below to complete the proceedings in S.T.C.No.20 of 2017 within a period of four(4) months from the date of receipt of a copy of this order . 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(CS-IX)

// True Copy //

Sub Assistant Registrar

msv

To

1.The Judicial Magistrate No.II,
Hosur, Krishnagiri District.

2.The Chief Judicial Magistrate,
Krishnagiri.

+2ccs to M/s.D.N.Dhurgasha, Advocate SR.No.63348

+1cc to Mr.A.Balamurugan, Advocate SR.No.62566

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