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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2021

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL. O.P. NO.5438 OF 2017

AND

CRL.M.P.NO.4073 OF 2017

R.Kumar

..Petitioner/Accused

Vs.

L.Parameswaran

...Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records in C.C.No.338/2015 filed under Section 138 of N.I Act pending on the file of IV Metropolitan Magistrate, George Town, Chennai and quash the same.

For Petitioner : Mr.T.K.Viswanath

For Respondent : No appearance

ORDER

This Criminal Original Petition has been filed to call for the records in C.C.No.338/2015 filed under Section 138 of N.I Act pending on the file of IV Metropolitan Magistrate, George Town, Chennai and quash the same.

2. The case of the defacto complainant is that the accused has borrowed a sum of Rs.1,50,000/- and issued a cheque towards the above debt on 26.05.2014. 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 that the petitioner is no way connected with the complainant. He further submitted that instead of summons, the Court has issued in the format of process of the City Civil Court. Therefore, the entire complaint has to be quashed.

4. At the outset, the very submission of the learned counsel has no legs to stand. Merely the summons has not been issued in a proper format, it cannot be taken as a ground to quash the proceedings under Section 138 of Negotiable Instruments Act, 1881. It is normal practice of the lower Court that, whenever concerned forms are not available and there is a deficit of forms in the lower court, in order to overcome the situation, they use other methods of summoning the persons and that cannot be a ground to challenge the entire proceedings.

5. 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.

6. In such view of the matter, I do not find any materials to quash the proceedings at this stage. Accordingly, this Criminal Original Petition is dismissed with a direction to the Trial Court to dispose of the main case within a period of three (3) months from date of receipt of a copy of this order. The petitioner is directed to pay a sum of Rs.2000/- to the other side.

7. 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



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Section 229 A of the Indian Penal Code. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

msv

To

The IV Metropolitan Magistrate,
George Town, Chennai.

Crl. O.P. No.5438 of 2017
and CRL.M.P.No.4073 of 2017

MG (CO)
RLP (28/12/2021)