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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2021

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Cr1. O.P. No.7551 of 2017
and Cr1.M.P.No.5458 & 5459 of 2017

Porselvan

..Petitioner

Vs.

Kandasamy

..Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for records relating to C.C.No.523 of 2016 on the file of the Judicial Magistrate, Thirukoilur and quash the same.

For Petitioner : Mr.C.Munusamy

For Respondent : Mr.N.Suresh

ORDER

This criminal Original Petition has been filed to call for records relating to C.C.No.523 of 2016 on the file of the Judicial Magistrate, Thirukoilur and quash the same.

2.The learned counsel for the petitioner submitted that having received the substantial amount of Rs.2,00,000/- towards cheque, still the respondent has filed a Criminal Complaint against the petitioner. The respondent herein has also filed a civil suit for recovery of money, which is pending before the Trial Court. Hence, prayed to quash the proceedings.

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.

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4. 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.

5. The learned counsel for the petitioners requested this Court to dispense with the presence of the petitioners. Taking into consideration, the facts and circumstances of the case, the presence of the petitioners are dispensed with except for receipt of copies, answering the charges, questioning under Section 313 Cr.P.C., or on any other date as may be required by the trial Court. They shall be represented by a counsel, who shall cross examine the witnesses on the same day, they are examined in Chief.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

nr/msv

To

The Judicial Magistrate,
Thirukoilur.

+lcc to Mr.N.Suresh, Advocate SR. No. 61388

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RGN (CO)
PR (06/12/2021)