



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2021

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRL. O.P. NO.6891 OF 2017

AND

CRL.M.P.NO.5013 &5014 OF 2017

B.Manoj

...Petitioner

Vs.

M/s.Raasi Diamond Private Limited
represented by its Authorized representative
Mr.Gopi S/o.Ranganathan
No.37, Vengatarathanam Nagar,
Adyar, Chennai-600 020
Tamil Nadu

...Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records in connection with C.C.No.146 of 2016 pending on the file of the Honourable III Metropolitan Magistrate Court, Saidapet, Chennai and quash the same.

For Petitioner : M/s.S.Latha

For Respondent : No appearance

ORDER

This Criminal Original Petition has been filed to call for the records in connection with C.C.No.146 of 2016 pending on the file of the III Metropolitan Magistrate Court, Saidapet, Chennai and quash the same.

2. Heard the learned counsel for the petitioner and there is no representation on behalf of the respondent.

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. Besides, the petitioner is not liable to pay towards the products delivered to the company, to which the petitioner's brother is a shareholder. Hence, prayed to quash the proceedings.



4. 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.

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. 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-VI)

// True Copy //

Sub Assistant Registrar

msv

To

The III Metropolitan Magistrate Court,
Saidapet, Chennai

Crl. O.P. No.6891 of 2017
and CRL.M.P.Nos. 5013 &5014 of 2017

KG(CO)
RVM(20/12/2021)