



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P. Nos.8858 & 8859 of 2017
& Crl.M.P.Nos.6376 to 6379 of 2017

(Through Video Conference)

A.Azizulkarim @ Sheik . . . Petitioner / Accused in
both cases
Vs.,

M/s.Aryakara Industries,
No.18A/Old No.33,
1st Street, Kamdar Nagar,
Nungambakkam, Chennai- 600 003
Rep. by its Power of Attorney,
Manager Administration,
D.Mohamadh Khaleel . . . Respondent in both cases

PRAYER: Criminal Original Petitions filed under Section 482 of Criminal Procedure Code to call for the records pertaining to the complaint and its proceedings in C.C.Nos.4356 & 4357 of 2013 pending on the file of Fast Track Judge - III, Saidapet and quash the same.

For Petitioner : Mr.C.V.Kumar

For Respondent : No Appearance

C O M M O N O R D E R

Since the issue involved in both these Criminal Original Petitions are one and the same, they are disposed of by this common order.

2. These Criminal Original Petitions have been filed to call for the records pertaining to the complaint and proceedings in C.C.Nos.4356 & 4357 of 2013 pending on the file of Fast Track Judge - III, Saidapet and quash the same mainly on



the ground that there is evidence to show that cheque has been fabricated. All the factual aspects have been produced in the application regarding Section 138 of the Negotiable Instruments Act.

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.

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, these Criminal Original Petitions are 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.

5. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

sts/gd



To

The Fast Track Judge - III,
Saidapet.

WEB COPY

Common Order made in
Crl.O.P.Nos.8858 & 8859 of 2017

KG (CO)
GN (30/11/2021)