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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2021

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL. O.P. NO. 22323 OF 2017

AND

CRL.M.P.NOS. 13081 AND 13082 OF 2017

Dr.Anbu Kumar

...Petitioner

Vs

Kamala Kannan Raj

...Respondent

(Amended as per the order of this Hon'ble Court dated 21/11/2017 made in Crl.M.P.No.14500 of 2017 in Crl.O.P.No.22323 of 2017)

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records in S.T.C.No.220 of 2016, pending on the file of the learned Judicial Magistrate Court No.I, Viruthachalam and quash the same.

For Petitioner ... Mr.Kingsly Solomon J

For respondent ... No appearance

O R D E R

This Criminal Original Petition has been filed to quash S.T.C.No.220 of 2016, pending on the file of the learned Judicial Magistrate Court No.I, Viruthachalam.

2. The case of the prosecution is that petitioner's cheque dated 6/12/2015, for a sum of Rs.5,00,000/- deposited on 4/1/2016 was returned with Bankers endorsement 'Payment stopped by drawer'. Hence a complaint has been lodged against the petitioner, under Sections 138 r/w.141 and 142 of the Negotiable Instruments Act, in S.T.C.No.220 of 2016, pending on the file of the learned Judicial Magistrate I, Viruthachalam.

3. Heard the learned counsel appearing for the petitioner and there is no representation on behalf of the respondent. Perused the materials available on record.

4. The learned counsel appearing for the petitioner submitted that unfilled signed cheques were issued for the



purpose of emergency, if the petitioner held up somewhere for his personal work and to avoid late payment and other charges. He further submitted that there is no iota of truth in the false complaint and there are no supporting materials to substantiate the case of the respondent.

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 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-VII)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Judicial Magistrate No.I,
Viruthachalam.



2. The Public Prosecutor,
High Court, Madras - 104.

+1cc to M/s.Kingsly Solomon J, Advocate, Sr.no.60799 [05/04/2022]

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Cr1. O.P. No.22323 of 2017

JP-II (CO)
RLP (04/01/2022)