



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 14.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CrI. O.P. No.22326 of 2017 and
CrI.M.P.No.13087 and 13088 of 2017

C.Owen Joseph Gilbanks . . . Petitioner/Accused

Versus

Shanmugam . . . Respondent/ Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to S.T.C. No.550 of 2014 by Judicial Magistrate Court, Udhagamandalam and quash the same.

For Petitioner : Mr.T.Shanmugam

For Respondent : Mr.J.Bharathiraja

ORDER

This is an application filed under Section 482 Cr.P.C. to quash the proceedings initiated against the petitioner in S.T.C. No.550 of 2014 on the file of the learned Judicial Magistrate, Udhagamandalam and quash the same.

2. It is the contention of the learned counsel appearing for the petitioner that the entire proceedings initiated under Section 138 of the Negotiable Instruments Act, 1881, is not maintainable, as there is no legally enforceable debt between the petitioner and the respondent. It is the further contention of the learned counsel for the petitioner that the cheque in question was issued to one Jawahar and in fact he has given a receipt accepting the payment and receiving of the cheque. Therefore, the present complaint is not maintainable.

3. At the outset, I am not able to persuade myself for such submissions, as it is a matter of evidence. Dislodging the legal presumption attached to the cheque, the initial onus lies on the drawer of the cheque. It is for the petitioner to prove the alleged receipt issued by the so-called Jawahar, before the trial court. Therefore, this court cannot make any rowing enquiry against the factual aspects, as it is a matter of evidence before the trial court.



4. At this juncture, the learned counsel appearing for the petitioner seeks the indulgence of this Court to grant an order dispensing with the personal appearance of the petitioner. Accordingly, the personal appearance of the petitioner/Accused before the trial Court is dispensed with, except for receipt of copies, answering the charges, questioning under Section 313 Cr.P.C., passing of judgment, or on any other date as may be required by the trial Court.

5. Accordingly, the criminal original petition is dismissed. Consequently, the connected criminal miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

psa/asr
To

The Judicial Magistrate,
Udhagamandalam.

+1 cc to Mr.T.Shanmugam, Advocate Sr.NO. 66705

+1 cc to Mr.J.Bharathiraja ., Advocate Sr.NO. 16690

Cr1. O.P. No.22326 of 2017

RSI (CO)
A.SK(30.12.2021)