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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2021

C O R A M

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL. O.P. NOS.124 & 126 OF 2017

AND

CRL.M.P.NOS.88 & 91 OF 2017

AND

CRL.M.P.NOS. 6086 & 6087 OF 2018

B.Rajendra Kumar Jain

... Petitioner / Accused in both Crl.O.Ps

Versus

M/s. Marida Sons Holding Pvt. Ltd.,
Represented by Mr.Pradeep Kumar Jain,
S/o. Nathamal Jain,
Authorized Agent
No.5, Damodharan Street, Kilpauk,
Chennai - 600 010.

... Respondent in Crl.O.P.No.124/2017

Suresh Bafna
Prop. M/s.Sri Chandraprabhu Agency
Rep. by K.S.Krishnanda Gupta
S/o.Sreekanthia Setty
Power of Attorney
No.22, Mulla Sahib Street
Sowcarpet
Chennai - 600 079

... Respondent in Crl.O.P.No.126/2017

Prayer in Crl.O.P.No.124 of 2017 : Criminal Original Petitions filed under Section 482 of Cr.P.C. to call records pertaining to C.C.No.2135 of 2016 pending on the file of the learned Judicial Metropolitan Magistrate Fast Track Court VIII, George Town, Chennai and quash the same.

Prayer in Crl.O.P.No.126 of 2017 : Criminal Original Petitions filed under Section 482 of Cr.P.C. to call records pertaining to C.C.No.2101 of 2016 pending on the file of the learned Judicial Metropolitan Magistrate Fast Track Court VII, George Town, Chennai and quash the same.



For Petitioner : Mr.M.Praveen Kumar

For Respondent : Mr.M.V.Seshachari

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O R D E R

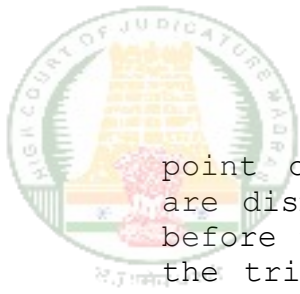
These Criminal Original Petitions have been filed to quash the proceedings in C.C.No.2101 of 2016 pending on the file of Judicial Metropolitan Magistrate Fast Track Court VII, George Town, Chennai and C.C.No.2135 of 2016 pending on the file of learned Judicial Metropolitan Magistrate Fast Track Court VIII, George Town, Chennai for the offence under Section 138 of Negotiable Instrument Act, 1881.

2. The case of the prosecution is that the accused borrowed loan on various dates from the de facto complainant by executing promissory notes in favour of the complainant on the respective dates and on repeated demands made by the de facto complainant, the accused issued cheques to discharge the loan with interest. When the cheques were presented for encashment, the same got dishonoured resulting in the filing of private complaints.

3. The main ground urged by the learned counsel for the petitioner is that there is no legally enforceable debt and the cheques issued by the petitioner/ Accused to the respondent have been misused and there is no prior transaction between the parties. Further the cheques were given only as security in the year 2013 and therefore, both the proceedings have to be quashed.

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 as to the validity of issuance of cheque and whether a cheque has been issued towards a legally enforceable debt or not. These 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 Apex Court in RAJESH BHAI, MULJI BHAI PATEL AND OTHERS VS. STATE OF GUJARAT AND ANOTHER reported in (2020) 3 SCC 794 has categorically held that High Court cannot exercise jurisdiction under Section 482 Cr.P.C to quash the criminal proceedings initiated under Section 138 of the Negotiable Instruments Act as the burden rests upon on the accused to discharge the legal presumption by adducing evidence.

5. In such a view of the matter, this Court is of the view that quashing of the complaints 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) with two sureties each. 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(CCC)

//True Copy//

Sub Assistant Registrar

gpa/gba

To

1. Judicial Metropolitan Magistrate Fast Track Court VII
George Town, Chennai.
2. Judicial Metropolitan Magistrate Fast Track Court VIII
George Town, Chennai.

+2ccs to Mr.M.Praveen Kumar, Advocate, S.R.Nos.68141, 68142

CrI. O.P. Nos.124 & 126 of 2017 and
CrI.M.P.Nos.88 & 91 of 2017 and
CrI.M.P.Nos. 6086 & 6087 of 2018

RLD(CO)
RLP(10/01/2022)