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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.22689 OF 2017 &
CRL.M.P.NOS.13232 & 13233 OF 2017 & 11220 OF 2018

S.Sangari

...Petitioner / Accused

Vs

Kasthuri

...Respondent / Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records of the complaint filed under section 138 of Negotiable Instruments Act by the respondent in C.C.No.569 of 2017 on the file of the IV Fast Track Court, George Town, Chennai and quash the same.

For Petitioner : Dr.G.Krishnamurthy

For Respondent : No appearance

O R D E R

This petition has been filed to quash the complaint filed in C.C.No.569 of 2017 on the file of the Fast Track Court No.IV, George Town, Chennai for the offence under section 138 of Negotiable Instruments Act.

2. It is the case of the complainant that the accused has induced the complainant to join in a saving scheme and collected huge amount and as against the same, the cheque has been issued. When the same was presented for encashment, the cheque was dishonoured for the reason 'payment stopped by drawer'. After issuing statutory notice, the present complaint has been filed. The same has been sought to be quashed mainly on the ground that since the cheque was not dishonoured, offence under section 138 of the Negotiable Instruments Act will not be attracted. It is his further contention that the cheque was issued under coercion in the police station. Therefore, the cheque cannot be enforced for legally enforceable debt. Though he has relied on the judgments in



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1. Rajendran Vs. N.Radhakrishnan in Criminal Appeal No.235 of 2005 dated 17.07.2012 [Madras High Court]

2. Subburam Vs. Rajaguru in CrI.O.P.[MD] No.14830 of 2004, dated 06.07.2007 [Madurai Bench of Madras High Court]

3. Chellammal Vs. S.Krishnamoorthy in CrI.O.P.No.7989 of 2009, dated 05.08.2009 [Madras High Court]

a perusal of above judgments, it is seen that the same have been passed in an appeal taking into consideration of proved facts. The other judgments relied on by the petitioner are where there is no legally enforceable debts. Hence, the above judgments cannot be mechanically applied to the present case. Whether or not the cheques were issued as a result of coercion is a matter of evidence. In such view of the matter, this Court cannot assume the role of the trial Court while exercising its jurisdiction under section 482 of Cr.P.C. and come to the conclusion that the facts have been proved. Therefore, the contention of the learned counsel for the petitioner that the cheque was returned on the ground of stop payment has no legs to stand. Hence, I do not find any grounds to quash the proceedings.

3. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed. 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 accused 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. The trial Court is directed to dispose of the case in C.C.No.569 of 2017 expeditiously within a period of three months from the date of receipt of a copy of this Order. the personal appearance of the petitioners is dispensed with except for receiving copies, for answering the charges, for questioning under section 313 of Cr.P.C. and any other dates fixed by the Trial Court.

Sd/-

Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

vrc/kbs



To

The Metropolitan Magistrate,
Fast Track Court at Magistrate Level IV,
George Town, Chennai.

+1cc to Dr.G.Krishnamurthy, Advocate SR.No.63340

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CrI.M.P.Nos.13232 & 13233 of 2017 &
11220 of 2018

GPL (CO)
RVM(17/12/2021)