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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.13713 OF 2017

AND

CRL.M.P.NOS.8821 & 8822 OF 2017

B.Manoj

... Petitioner/Accused

.Vs.

M/s.Raasi Diamond Pvt. Ltd.,
Represented by its Authorized
Representative, Gopi,
No.37, Venkatarathanam Nagar,
Adyar, Chennai - 600 020.
Tamil Nadu.

... Respondent/Respondent

PRAYER:-

Criminal Original Petition filed under Section 482 Cr.P.C.,
to call for the records in connection with C.C.No.5722 of 2015
pending on the file of the III Metropolitan Magistrate Court,
Saidapet, Chennai, and quash the same.

For Petitioner : Mr.U.Manogar

For Respondent : Notice sent - Service awaited

O R D E R

This Criminal Original Petition has been filed to quash the
complaint in C.C.No.5722 of 2015 pending on the file of the III
Metropolitan Magistrate Court, Saidapet, Chennai, for the
offence under Section 138 of the Negotiable Instruments Act.

2. The case of the complainant is that the complainant is a
company engaged in the business of selling diamonds and gold
jewellery. The accused and his brother, who are dealing with the
trade of diamonds, approached the complainant and placed orders



of goods. In the course of the business transactions, towards the payment of dues, the petitioner issued three cheques drawn on State Bank of India, out of which, the cheque for a sum of Rs.10,00,000/- was presented by the complainant, but the same was dishonoured for insufficiency of funds on 20.02.2015. After sending statutory notice, the complainant initiated prosecution as against the petitioner for the offence under Section 138 of the Negotiable Instruments Act.

3. The main contention of the learned counsel for the petitioner is that there is no legally enforceable debt and the brother of the petitioner has not been made as an accused. Further, he contended that the cheque in question was obtained by force. Therefore, the learned counsel prayed that the entire complaint is liable to be quashed.

4. Heard the learned counsel on either side and perused the materials available on record.

5. I am unable to persuade myself to accept the submissions of the learned counsel for the petitioner. Whether or not there is a legally enforceable debt is a matter of evidence and the same cannot be decided by this Court while exercising jurisdiction under Section 482 Cr.P.C. The burden is on the petitioner/accused to dislodge the legal presumption under Section 139 of the Negotiable Instruments Act. Moreover, the contention of the petitioner that the cheque was obtained forcibly, has also to be tested by the trial Court by appreciation of evidence and this Court cannot conduct a roving enquiry and decide the matter at this stage itself. Therefore, I do not find any merit in this petition and this Court is not inclined to quash the complaint at this stage.

6. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

7. It is for the petitioner to take all his defence before the trial Court. The petitioner/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, the trial Court is directed to release the petitioner on bail on the same day on he 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.

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Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mkn

To

1. The III Metropolitan Magistrate,
Saidapet, Chennai.
2. -Do- Thro The Chief Metropolitan Magistrate,
Egmore, Chennai.

Copy To:-

B.Manoj,
S/o.A.Belliraj,
No.2/223, Mel Anayahatty Village,
Kothagiri, Nilgiris - 632 217,
Tamil Nadu.

CRL.O.P.NO.13713 OF 2017

NR(CO)
PBS/05/01/2022