



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.11.2021

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CrI. O.P. No. 23915 of 2017
and
CrI.M.P.Nos. 13845 & 13846 of 2017

K.Periyasamy		. . . Petitioner
	Versus	
S.Sivakumar		. . . Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records in C.C.No.128 of 2017 on the file of Judicial Magistrate No.I, at Mettur and quash the same.

For Petitioner : Mr.K.Myilsamy

For respondent : Mr.V.Sekar

O R D E R

This Criminal Original Petition has been filed to quash the complaint in C.C.No.128 of 2017, pending on the file of the learned Judicial Magistrate No.I, at Mettur.

2. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent and perused the materials available on record.

3. 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.



4. 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. The personal appearance for the petitioner is dispensed with, except for answering the parties, receiving copies, 313 questioning on some other date specifically fixed by the Trial Court. 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(CO)

//True copy//

Sub Assistant Registrar

shk
To

1. The learned Judicial Magistrate No.I,
Mettur.
2. The Chief Judicial Magistrate,
Salem.

+1cc to Mr.K.Myilsamy, Advocate SR.No.61182

Cr1. O.P. No.23915 of 2017

KSM(CO)
GMY(08/12/2021)