



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17/11/2021

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CrI. O.P. No.15087 of 2017
and
CrI.M.P.No.9525 of 2017

A. Salavutheen ... Petitioner

Vs

D. Lokeshwaran ... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records pertaining to the complaint in S.T.C.No.114 of 2017, on the file of the learned Judicial Magistrate, Kothagiri and quash the same.

For petitioner ... Mr.J.Franklin

For respondent ... No appearance

O R D E R

This Criminal Original Petition has been filed to quash S.T.C.No.114 of 2017, on the file of the learned Judicial Magistrate, Kothagiri.

2. Heard Mr.J.Franklin, learned counsel for the petitioner and there is no representation on behalf of the respondent.

3. The main contention of the learned counsel for the petitioner is that the accused is only a partner in the partnership firm. Therefore, the complaint against him is not maintainable.

4. With regard to the above submission, this Court is of the view that the very complaint itself indicate that the accused has borrowed the amount and issued a cheque. Whether the accused is a partner in the partnership firm or not, is a



matter of evidence, which cannot be gone into at this stage. 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.

5. 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. 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 Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mvs.

To

The Judicial Magistrate, Kothagiri

Cr1. O.P. No. 15087 of 2017
and
Cr1.M.P.No.9525 of 2017

KSM(CO)
SU(29/11/2021)