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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2021

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.15768 OF 2017

AND

CRL.M.P.NOS.9822 & 9823 OF 2017

Jeyadurga

... Petitioner

.Vs.

Anbalagan

... Respondent

PRAYER:-

Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for records relating to C.C.No.23 of 2016 on the file of the Judicial Magistrate, Fast Track Court at Magisterial Level, Dharmapuri and quash the same.

For Petitioner : Mr.C.Munusamy

For Respondent : Mr.J.Bharathiraja

ORDER

This Criminal Original Petition has been filed to call for records relating to C.C.No.23 of 2016 on the file of the Judicial Magistrate, Fast Track Court at Magisterial Level, Dharmapuri and quash the same.

2. Heard the learned counsel for the petitioner and learned counsel for the respondent.

3. It is the contention of the learned counsel for the petitioner that there is no legally enforceable debt existing between the petitioner and the complainant. The cheque was issued only towards the transaction between her husband and defacto complainant. Therefore, the present complaint as against the petitioner is not maintainable has to be quashed. At the



outset, I am unable to agree with the learned counsel's submissions whether there is a legally enforceable debt or not is a matter of evidence before the trial Court. When the submission itself indicated that the cheque has been issued by the defacto complainant on the account maintained by her.

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 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 with a direction to the Court below to complete the proceedings in CC No.23 of 2016 within a period of six months from the date of receipt of a copy of this order. 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(CS VIII)

//True Copy//

Sub Assistant Registrar

nr/ggs



To

The Judicial Magistrate,
Fast Track Court (Magisterial Level),
Dharmapuri.

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