



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2021

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL. O.P. NO.25434 OF 2017
AND CRL.M.P.NO.14642 & 14643 OF 2017

1. Micro Dynamics Private Limited
T-178, MIDC Bhosari,
Pune, Maharastra 411 026
Rep by its Managing Director Isharat Ali

2. Mr.Isharat Ali

..Petitioners

Vs.

Jagdhatri Papers Private Limited
Having Office at No.7 AD Block, 1st floor,
2nd Avenue, Anna Nagar, Chennai
Rep by its Authorized Signatory Mr.Ramesh Tiwari

...Respondent

PRAYER:

Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records relating to the proceedings in C.C.No.701 of 2017 on the file of the II Metropolitan Magistrate cum Fast Track Court-I Allikulam, Chennai and quash the same.

For Petitioner : Mr.A.Esakkiappan

ORDER

This Criminal Original Petition has been filed to call for the records relating to the proceedings in C.C.No.701 of 2017 on the file of the II Metropolitan Magistrate cum Fast Track Court-I Allikulam, Chennai and quash the same.

2. Learned counsel for the petitioner submitted that the main ground on which the quashment is sought that the demand notice after dishonour of cheque has not been served nor sent to him. Therefore, the entire proceedings has to be quashed.



3. This Court has perused the entire materials available on record. The very complaint itself indicate the fact that the notice has been sent and served on the accused on 12.09.2016. Therefore, whether the notice was received by the petitioner or not is a triable issue, which has to be decided only by way of a full fledged trial. In such a view of the matter, quashing of the case cannot be considered, at this point of time. 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. 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 VII)

//True Copy//

Sub Assistant Registrar

msv



To

The II Metropolitan Magistrate cum Fast Track Court-I,
Allikulam.

+1cc to Mr.A.M.Esakkiappan, Advocate, S.R.No.62821

Crl. O.P. No. 25434 of 2017
and Crl.M.P.Nos.14642 and 14643 of 2017

PMK (CO)
PM/16/12/2021