



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2021

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No.25568 of 2017
and Crl.M.P.Nos.14711 and 14712 of 2017

R.Tamilselvi

...Petitioner/Accused

Vs.

A.M.Balasubramaniam

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records concerned in S.T.C.No.394 of 2017 on the file of the Judicial Magistrate/Fast Track Court, Tiruchengode, Namakkal District and quash the same.

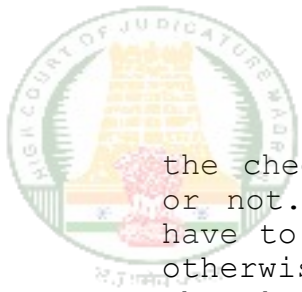
For Petitioner : Mr.C.Prakasam

For Respondent : Mr.G.V.Ramanigopal
for M/s.T.L.Thirumalaisamy

ORDER

This Criminal Original Petition has been filed to call for the records concerned in S.T.C.No.394 of 2017 on the file of the Judicial Magistrate/Fast Track Court, Tiruchengode, Namakkal District and quash the same.

2. The crux of the allegations is that the petitioner has joined in the Chit transaction with one Subramaniam from the year 2011 to 2014. In this regard, blank cheques have been issued as security. At the time of chit transactions, the same has been misused by the brother of the accused. As the very allegations itself are based on factual aspects, it requires evidence. As the Negotiable Instruments Act is governed by special statutory presumption, it is for the accused to dislodge such presumption by bringing in the probabilities. Therefore, it is for the petitioner to raise all his defence before the trial Court by adducing evidence and it is for the trial Court to appreciate the same and decide the matter. 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.

3. In such 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. Consequently, connected Criminal Miscellaneous Petitions are closed.

4. It is for the petitioner to take all her 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 she executing a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) each with two sureties. If thereafter, she absconds, a fresh FIR can be registered under Section 229-A of the Indian Penal Code.

5. It is stated by the counsel for the respondent that the respondent had died. In such view of the matter, the respondent shall bring the legal heirs on record before the Trial Court for further proceedings.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

msv

To

The Judicial Magistrate/Fast Track Court,
Tiruchengode, Namakkal District.

+1cc to Mr.C.Prakasam, Advocate SR. No.66717

+1cc to Mr.T.L.Thirumalaisamy, Advocate SR. No.65954

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SR (CO)
PR (06/01/2022)