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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2021

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No.25653 of 2017
and Crl.M.P.No.14751 of 2017

S.Alagarasamy

...Petitioner/Accused

Vs.

G.Susila

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records of the complaint under Section 138 and 142 of the Negotiable Instruments Act in C.C.No.35 of 2017 pending on the file of the learned Judicial Magistrate No.II, Chengalpet and quash the same.

For Petitioner : Mr.S.Radhakrishnan

ORDER

This Criminal Original Petition has been filed to call for the records of the complaint under Section 138 and 142 of the Negotiable Instruments Act in C.C.No.35 of 2017 pending on the file of the learned Judicial Magistrate No.II, Chengalpet and quash the same.

2. The case of the defacto complainant is that the accused has borrowed a sum of Rs.2,75,000/- and issued a cheque towards the above debt. When the cheque was presented for encashment, the same was dishonoured for the reason "payment stopped by the Drawer". After complying the statutory notice, the defacto complainant has filed the complaint.

3.Learned counsel for the petitioner submitted that the main ground on which the quashment of proceedings is sought for before this Court is that there is no legally enforceable debt and the cheque was obtained at knife point, in respect of which, the F.I.R is pending and the amount has already been paid by the petitioner. Therefore, the entire complaint has to be quashed.



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 Trial Court to dispose of the main case within a period of three(3) 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 Petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

msv

To

The Judicial Magistrate No.II,
Chengalpet.

Crl. O.P. No.25653 of 2017
and Crl.M.P.No.14751 of 2017

MG (CO)

PR (28/12/2021)

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