



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2021

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

CRL.O.P.No.16466 of 2017

and

CRL.M.P.Nos.10141&10142 of 2017

M.Maya Venkatesan

...Petitioner

Versus

S.Kathiravan

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, pleased to call for the records in C.C.No.47/2017 on the file of the learned Judicial Magistrate No. II, Mayiladuthurai and quash the same.

For Petitioner : Mr.B.Sundarapandiyar

For Respondent : No appearance

O R D E R

This Criminal Original petition has been filed to call for the records in C.C.No.47/2017 on the file of the learned Judicial Magistrate No. II, Mayiladuthurai and quash the same.

2. The respondent/complainant has preferred a complaint under Section 138 of the Negotiable Instruments Act in C.C.No.47 of 2017 before the learned Judicial Magistrate No.II, Mayiladuthurai against the petitioner.

3. Challenging the said complaint the petitioner has filed this present quash petition on the ground that the Legal Notice dated 21.12.2016 is bereft of details.

4. On perusal of the Legal Notice, it is noticed that the petitioner has borrowed a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) from the respondent/complainant. To discharge his liability towards respondent/complainant, the petitioner had issued a cheque dated 13.09.2016 drawn on the Indian Overseas Bank, Sembanarkoil Branch bearing No.505564 for a sum of Rs.20,00,000/-. When the said Cheque was presented on 09.12.2016 for encashment, the same was dishonoured on 09.12.2016 with an endorsement as "Insufficient Funds".



5. This Court is at a loss to understand, as to how the petition to quash the private complaint is maintainable, when sufficient averment is already available in the Legal Notice.

6. 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.

7. 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

rsi/ham



To

1. The Judicial Magistrate No. II,
Mayiladuthurai.

2. The Public Prosecutor,
High Court, Madras.

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and
CRL.M.P.Nos.10141 & 10142 of 2017

PM[co]
NSK 24/11/2021