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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.16798 of 2017

and

Crl.M.P.Nos.10323 & 10324 of 2017

1. M/s.Safanna Associates,
Though its Proprietor, Neina Saroj,
No.B/3, Municipal Employees Colony,
Maharaja Nagar,
Tirunelveli-627 011,
Palayamkottai Police Station Limit.
2. Neina Saroj,
Proprietor of M/s.Safanna Associates,
No.B/4, Municipal Employees Colony,
Tirunelveli-627 011,
Palayamkottai Police Station Limit.

...Petitioners

Vs.

M/s.Crompton Greaves Limited
Regional Office,
No.3, Dr.M.G.R.Salai,
Nungambakkam, Chennai-600 034,
Though its Legal Executive and
Power Agent Rajesh Dhanaraman

..Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records pertaining to C.C.No.5098 of 2016 on the file of Metropolitan Magistrate, Fast Track Court-II, Allikulam Commercial Complex, Moor Market, Chennai-600 003 and quash the same.

For Petitioners : Mr.A.Selvendran



ORDER

This Criminal Original Petition has been filed to call for the records pertaining to C.C.No.5098 of 2016 on the file of Metropolitan Magistrate, Fast Track Court-II, Allikulam Commercial Complex, Moor Market, Chennai-600003 and quash the same.

2.The main contention of the learned counsel for the petitioner is that despite the specific intimation given to the Respondent not to present the cheque, they have presented the cheque. Hence, he has given stop payment intimation to the bank and on the ground alone cheque was dishonoured. In such circumstance, the offence cannot be made out under Section 138 of N.I.Act.

3. At the outset, I am unable to agree with the submissions of the learned counsel for the Petitioner. There is no compelling ground to quash the proceedings. 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.

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.

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Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

nr/ggs

To:

1. The Metropolitan Magistrate,
Fast Track Court-II,
Allikulam Commercial Complex,
Moor Market, Chennai.
2. Do-Through,
The Chief Metropolitan Magistrate,
Chennai.

Crl. O.P. No.16798 of 2017
and Crl.M.P.Nos.10323 & 10324 of 2017

SSI (CO)
SU (27/12/2021)