



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2021

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Crl.O.P.Nos.17545 & 17546 of 2017

and

Crl.M.P.Nos.10738 & 10739 & 10812 of 2017

M/s.Shreepavi Constructions

Represented by its Proprietor

S.Alaghesan,

No.5/541, Pari Road,

Mogappair East,

Chennai - 600 037.

... Petitioner/Accused in both petitions

Vs.

M/s.MVM Builders and Promoters

Represented by its Proprietor

B.Lakshmi Narasimhan,

No.25, Thiruvassagam 2nd Street,

Sri Balaji Nagar, Pattabiram,

Chennai - 600 072.

... Respondent/Complainant in both petitions

Prayer in Crl.O.P.No.17545 of 2017: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the entire records in pursuant to the impugned petition in S.T.C.No.295 of 2016 on the file of the Judicial Magistrate at Poonamallee and quash the same.

Prayer in Crl.O.P.No.17546 of 2017: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the entire records in pursuant to the impugned petition in S.T.C.No.294 of 2016 on the file of the Judicial Magistrate at Poonamallee and quash the same.

For Petitioner: No appearance
in both petitions

For Respondent: No appearance
in both petitions



C O M M O N O R D E R

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These Criminal Original Petitions have been filed to quash the proceedings in S.T.C.Nos.294 & 295 of 2016 on the file of the Judicial Magistrate at Poonamallee.

2.When the matter was taken up for hearing, there was no representation on either side.

3.Perused the entire materials available on record.

4.The petitioner is charged with an offence under Section 138 of the Negotiable Instruments Act. 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 view of the matter, this Court is of the view that, quashing of the case cannot be considered at this point of time. Accordingly, these Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

6.It is for the petitioner to take all his 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 he 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.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

mkn
To

The Judicial Magistrate,
Poonamallee.

Cr1.O.P.Nos.17545 & 17546 of 2017

svi[col]
srg 30/11/2021