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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2021

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Cr1.O.P.No.17751 of 2017

B.Buvaneswari

... Petitioner / Accused

Vs.

B.Rathinavel

... Respondent / Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to S.T.C.No.44 of 2017 pending on the file of the Judicial Magistrate II, Poonamallee, and quash the same.

For Petitioner : Mr.M.R.Sheik Abdul Rahim

For Respondent : No appearance

ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.44 of 2017 on the file of the Judicial Magistrate-II, Poonamallee.

2.Heard the learned counsel for the petitioner and perused the entire materials available on record.

3.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.



4. 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.

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5. 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.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

mkkn

To

The Judicial Magistrate II,
Poonamallee.

Cr1.O.P.No.17751 of 2017

SVI (CO)
SB(01/12/2021)