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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.12.2021

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. Nos.27226 to 27228 of 2017
and
Crl.M.P.Nos.15617 to 15622 of 2017

1. Allaya Process
Rep. by the Partner
G.Pushbaraj
S/o.Govindasamy Gounder
287/2, Goundachy Thottam
Athupalayam
Thirumuruganpoondi (Po)
Tiruppur - 641 652
2. G.Pushbaraj
S/o.Govindasamy Gounder
287/2, Goundachy Thottam
Athupalayam
Thirumuruganpoondi (Po)
Tiruppur - 641 652

...Petitioners/Accused 1 and 2 in all Crl.O.Ps

Versus

T.S.Kuppusamy
...Respondent in Crl.O.P.No.27226 of 2017/Complainant

S.Jegadeesh
...Respondent in Crl.O.P.No.27227 of 2017/Complainant

R.Varadharajan
...Respondent in Crl.O.P.No.27228 of 2017/Complainant

Common Prayer : Criminal Original Petitions filed under Section 482 of Cr.P.C. to call records in S.T.C.Nos.606, 571 and 180 of 2017 on the file of learned District Munsif-cum-Judicial Magistrate, Kodumudi and quash the same.

For Petitioners : No appearance

For Respondent : Mr.V.Balamurugane



O R D E R

These Criminal Original Petitions have been filed to quash the proceedings in S.T.C.Nos.606, 571 and 180 of 2017 pending on the file of learned District Munsif-cum-Judicial Magistrate, Kodumudi

2. Today, when the matter is taken up for hearing, there is no representation on behalf of the petitioners.

3. 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 cases cannot be considered, at this point of time. Accordingly, these Criminal Original Petitions are dismissed. It is for the petitioners to take all their defence before the trial Court. The second petitioner 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 second 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.

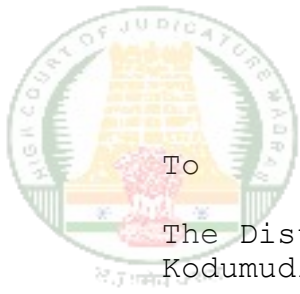
Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

gpa



To

The District Munsif-cum-Judicial Magistrate
Kodumudi.

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Crl. O.P. Nos.27226 to 27228 of 2017 and
Crl.M.P.Nos.15617 to 15622 of 2017

AKII (CO)
PR (29/12/2021)