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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2021

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL. O.P. NOS.2736 OF 2017  
AND CRL.M.P.NOS.3164,1935 &1936 & OF 2017

1.Anuragha Poultries and Breeders Private Limited,  
Rep. by its Director,  
K.Kothandapani,  
No.77, Dhali Road, Sri Senthoor Complex,  
Opp.to Udumalpet Municipal Office,  
Udumalpet.

2.K.Kothandapani

...Petitioners

Vs.

S.K.Bala Vasanthakumar

...Respondent

PRAYER:

Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to quash the complaint in C.C.No.172 of 2016 on the file of Judicial Magistrate 1, Udumalpet.

For Petitioners : M/s.Kaavya Silambanan

For Respondent : No appearance

ORDER

This Criminal Original Petition has been filed to to quash the complaint in C.C.No.172 of 2016 on the file of Judicial Magistrate 1, Udumalpet.

2. The petitioners are arrayed as A1 and A2 in C.C.No.172 of 2016. The case of the defacto complainant is that the



petitioners approached him for hand loan for their company and on 10.05.2016, he lent a sum of Rs.11,00,000/- to the second petitioner/A2 on promise that the same would be repaid by him within a month. Thereafter, the 2<sup>nd</sup> petitioner gave a post dated cheque on the same day drawn on Indian Overseas Bank, Udumalpet Branch dated 13.06.2016 towards the above debt. When the cheque was presented for encashment on 13.06.2016, the same was returned for the reason "account have been closed by the company". After complying the statutory notice, the defacto complainant has filed the complaint.

3. Learned counsel for the petitioner submitted that the main ground on which the quashment of proceedings is sought for before this Court is that there is no legally enforceable debt. He further submitted that the complaint has been initiated due to collusion with the Ex-Auditor of the company and all the documents were originally in the hands of the Auditor, which has misused by the present complainant and the cheque was not issued by the petitioners. Hence, the proceedings has to be quashed.

4. 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 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 petitioners to take all their 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 petitioners 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/msv

To

- 1 The Judicial Magistrate I,  
Udumalpet.
- 2 The Chief Judicial Magistrate,  
Thiruppur District.

Cr1. O.P. Nos.2736 of 2017  
and CRL.M.P.Nos.3164,1935 &1936 of 2017

EV(CO)  
PM/28/12/2021