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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2021

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

CRL.O.P. NO.18574OF 2017

AND

CRL. M.P. NOS. 11309 AND 11310 OF 2017

S.Ravikumar

... Petitioner/  
Accused

.vs.

M/s.Cholamandalam Investment and Finance Company Ltd.,  
Hosur Branch,  
Represented by its SPA and Senior Executive,  
Mr.Manikandan, Hosur Branch.

... Respondent/  
Complainant

PRAYER:

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in S.T.C.No.154 of 2016 on the file of Judicial Magistrate, Fast Track of Hosur and quash the same.

For Petitioner : Mr.M.P.Saravanan

For Respondent : Service awaited

ORDER

This Criminal Original Petition has been filed to Quash the proceedings in S.T.C.No.154 of 2016 pending on the file of Judicial Magistrate, Fast Track of Hosur.

2. The main ground sought before this Court is that already arbitration proceedings were initiated for recovery of money and award has been passed. Therefore, the criminal prosecution is not maintainable for the same. At this stage, I am unable to persuade myself to accept the contention of the counsel.



Merely because the arbitration proceedings are initiated to recover the money, the same cannot be said that it will wipe out the criminal culpability of the parties.

3. The contention that the cheque was issued towards security and not towards the legal enforcement is a matter of evidence which cannot be probed into at this stage. 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. Consequently, connected Criminal Miscellaneous Petitions are closed.

5. 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(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,  
Fast Track of Hosur.
2. The Public Prosecutor,  
High Court of Madras,  
Madras.
3. The Chief Judicial Magistrate,  
Krishnagiri.

+1cc to Mr.M.P.Saravanan, Advocate, SR.NO.58080

Crl.O.P.No.18574 of 2017

PCH(CO)  
PM/06/12/2021