



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2021

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No.28022 of 2017

and

Crl.M.P.Nos.15949 and 15950 of 2017

Mr.V.S.Srinivasan ...Petitioner / Accused
Vs.

M/s.XLT Engineers,
Rep. by its Proprietor Mr.M.Ilamurugu,
S/o.S.Muthulagu,
No.1, Malli Street, K.K.Nagar,
Peerankaranai, N.Perungalathur,
Chennai 600 063. ...Respondent / Complainant

PRAYER :Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to S.T.C.No.3077 of 2017 on the file of the Judicial Magistrate, Tambaram and quash the same.

For Petitioner : Mr.A.Ilaya Perumal

For Respondent : Mr.R.Sreedhar

ORDER

The Criminal Original Petition has been filed to quash the case in S.T.C.No.2017 on the file of the Judicial Magistrate, Tambaram.

2. It is the case of the petitioner that he has worked in the Respondent company which was engaged in the business of sales of earth moving equipments. When the business turned non-profitable one, the proprietor of the respondent's concern desired to close down the business and instructed the Respondent to take steps to vacate the shop. The respondent prepared a stock register on his own volition and threatened the petitioner the pay a sum of Rs.10,69,915/- as value of difference in stock. The petitioner was confined in a house and threatened the petitioner's wife and received a sum of Rs.2,50,000/- under threat. He also forcibly obtained a cheque for Rs.10,69,915/- under coercion and presented the same into the bank and filed a complaint under Section 138 N.I.Act without any legally enforceable debt. Since the case filed by the Respondent against the petitioner is not maintainable either in law or on fact, the petitioner is before this Court to quash the 138 proceedings.

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 case cannot be considered, at this point of time. Accordingly, this Criminal Original Petition is dismissed. It is for the petitioner to take all his 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 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 Petitions are closed.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

nr/ggs

To:

The Judicial Magistrate,
Tambaram, Chennai.

+1cc to M/s.A.Ilayaperumal, Advocate, S.R.No.58337
+1cc to M/s.R.Sreedhar, Advocate, S.R.No.58765

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and

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VSN-II (CO)
SB(08/12/2021)