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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2021

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No.19927 of 2017

and

Crl.M.P.Nos.12010 & 12011 of 2017

1. M/S.Maran Textiles

Rep.by its Proprietor R.Thirumaran
No.62B, 1st Floor, Godown Street,
Chennai-600 001.

2. R.Thirumaran

Proprietor, Maran Textiles,
No.62B, 1st Floor, Godown Street,
Chennai-600 001.

..Petitioners

Vs.

M/S.Swathi Textiles Printers,
Rep.by its Partner, N.Ashok Kumar,
No.282, Easwaran Koil Street,
Erode-638 001.

..Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records in respect of STC.No.139 of 2016, pending on the file of the Judicial Magistrate Court-II Erode and quash the same as contrary to law and illegal and discharge the petitioner.

For Petitioners : Mr.R.Munuswamy

For Respondent : Mr.M.Guruprasad

ORDER

This Criminal Original Petition has been filed to call for the records in respect of STC.No.139 of 2016, pending on the file of the Judicial Magistrate Court-II Erode and quash the same.

2. Heard the learned counsel for the petitioners and learned counsel for the respondent.



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. The learned counsel for the petitioners requested this Court to dispense with the presence of the petitioner. Taking into consideration, the facts and circumstances of the case, the presence of the petitioner is dispensed with and he shall be represented by a counsel, who shall cross examine the witnesses on the same day, they were examined in Chief. The petitioner shall be present before the Court below at the time of questioning under Section 313 Cr.P.C and at the time of passing of the final judgment.

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 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-IV)

//True Copy//

Sub Assistant Registrar

nr/ggs



TO

The Judicial Magistrate II,
Erode.

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+1cc to Mr.M.Guruprasad, Advocate SR.No.59904

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PA (CO)
GN (16/12/2021)