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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 02.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No. 28869 of 2017
and
Crl.M.P.Nos.16329 and 16330 of 2017

1.M/s.K.P.Textiles (Cbe) Pvt.Ltd.,
Rep. by its Managing Director,
V.K.Padmanaban
4/237, Karanampettai Post,
Sullur, Coimbatore 641 041.

2.V.K.Padmanaban

3.P.Poombavai

. . . Petitioners/Accused

Versus

M/s.Sree Anandakumar Mills Limited,
Rep. by its Office Manager,
M.P.Eswaramoorthy,
307, Sathy Road, Saravanampatti,
Coimbatore 641035.

. . . Respondent/Complainant

PRAYER :

Criminal Original Petition filed under Section 482 Cr.P.C.,
to call for the records and quash the proceeding in C.C.No.302
of 2017, on the file of Judicial Magistrate No.2, Coimbatore.

For Petitioners : Mr.P.Mahesh Kumar

For Respondent : Mr.V.Ramesh
for Mr.T.Thiyagarajan

ORDER

This Criminal Original Petition has been filed to quash the
criminal proceedings in C.C.No.302 of 2017, on the file of
Judicial Magistrate No.2, Coimbatore.



2.The petitioners are proceeded for an offence under Section 138 of the Negotiable Instruments Act.

3.The main ground urged before this Court by the learned counsel appearing for the petitioners is that the cheque was issued as a security.

4.Heard the learned counsel on either side and perused the entire material available on record.

5.This Court is of the view that, whether or not the cheque was issued as a security, is a factual aspect and it is a matter of evidence and the same cannot be decided by this Court in a petition under Section 482 Cr.P.C. 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.

6.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.

7.It is for the petitioners to take all their defence before the trial Court. The petitioners/accused are 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 petitioners on bail on the same day on they executing a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) each with two sureties. If thereafter, they abscond, a fresh FIR can be registered under Section 229-A of the Indian Penal Code.

8.At this juncture, the learned counsel appearing for the petitioners seeks indulgence of this Court to grant an order dispensing with the personal appearance of the petitioners. Accordingly, the personal appearance of the petitioners before the trial Court is dispensed with, except for receipt of copies, answering the charges, questioning under Section 313 Cr.P.C.,



passing of judgment, or on any other date as may be required by the trial Court.

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Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

psa/mkn

To

The Judicial Magistrate No.II,
Coimbatore.

+1cc to Mr.P.Mahesh Kumar, Advocate, S.R.No.63039

Cr1. O.P. No. 28869 of 2017

GPL(CO)
CT/17/12/2021