



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL. O.P. NO. 29098 OF 2017

AND

CRL.M.P.NOS.16434 & 16435 OF 2017

M/s.Subbiah Homes,
Represented by its Managing Partner,
S.Vadivel Murugan Subbiah,
Office at No.11/4A,
Brindavan Street Extension,
West Mambalam,
Chennai-600033.

... Petitioner/Accused

Versus

S.Saraswathi

... Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.248 of 2017, on the file of Learned Judicial Magistrate, Alandhur, Chennai and quash the same.

For Petitioner : Mr.K.S.Thiyagarajan

For Respondent : Mr.D.Devendran

ORDER

This Criminal Original Petition has been filed to quash the criminal proceedings in C.C.No.248 of 2017, on the file of Judicial Magistrate, Alandhur, Chennai, for the offence under Section 138 of N.I. Act.

2.Heard the learned counsel on either side and perused the entire materials available on record.

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 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 their defence before the trial Court. The Managing Partner of petitioner/accused company 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(CS-II)

//True Copy//

Sub Assistant Registrar

psa/mkn

To

1. The Judicial Magistrate,
Alandhur, Chennai.
2. -do- through The Chief Judicial Magistrate,
Egmore, Chennai.

Cr1. O.P. No. 29098 of 2017

RSI (CO)
RLP (20/12/2021)