



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2021

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CrI. O.P. No. 2991 of 2017
and
CrI.M.P.Nos.2150 & 2151 of 2017

Thangamalar,
W/o. Chandramouleeswaran

...Petitioner/Accused

Versus

Mr.P.C.Kailash Chand Jain,
S/o. Chitermal Jain

...Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in C.C.No.311 of 2012 on the file of learned Judicial Magistrate No.1, Mayiladuthurai, Nagapattinam District and quash the proceedings therein as against the petitioner herein.

For Petitioner : No appearance

For respondent : No appearance

O R D E R

(This case has been heard through video conference)

This Criminal Original Petition has been filed to quash the private complaint pending against the petitioner in STC.No.19 of 2013 on the file of the learned Judicial Magistrate No.1, Mayiladuthurai, Nagapattinam.

2. Today, when the matter is taken up for hearing, there is no representation neither on behalf of the petitioner nor on behalf of 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. 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 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, 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

rpp

To

1. The Judicial Magistrate No.1,
Mayiladuthurai.
2. Do Thro The Chief Judicial Magistrate,
Nagapattinam.

Crl. O.P. No. 2991 of 2017
and
Crl.M.P.Nos.2150 & 2151 of 2017

AD(CO)
RGA(30/11/2021)