



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.01.2022

C O R A M

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl. O.P. No.15567 of 2018
and
Crl.M.P.No.7944 of 2018

1.S.Lakshmi Devi
2.R.Kannapan

...Petitioners / Accused

Versus

R.Rajeswaran

...Respondent / Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the entire records connected with the complaint in S.T.C.No.390 of 2017 on the file of the learned Judicial Magistrate No.1, Poonamallee and quash the same.

For Petitioners : Mr.B.Janakiram

For Respondent : No appearance

O R D E R

This Criminal Original Petition has been filed to call for the entire records connected with the complaint in S.T.C.No.390 of 2017 on the file of the learned Judicial Magistrate No.1, Poonamallee and quash the same.

2. The crux of the complaint is that on 10.06.2016, the accused had approached the defacto complainant and requested him to lend a sum of Rs.2,00,000/- and assured to repay the same with interest. The complainant gave the amount by believing the words of the petitioners. Thereafter, the petitioners have not repaid the amount. Thereby, on 01.01.2017 when the amount was insisted by the defacto complainant, they issued a cheque towards the above debt. When the cheque was presented for encashment, the same was returned vide return memo stating as "contact drawer/drawee bank". After complying the statutory notice, the defacto complainant has filed the complaint, the same was taken on file in STC No.390 of 2017.



3. Learned counsel for the petitioner submitted that the main ground on which the quashment of proceedings is that there is no legally enforceable debt and the agreement entered between the parties in the year 2010 indicate that the cheques was issued in the year 2010 itself, whereas, in the complaint it is stated as if the cheque was issued in the year 2017. Further, the reply notice also properly issued by the petitioners herein which has been suppressed in the complaint. Hence it is submitted that the entire complaint initiated under Section 138 of the Negotiable Instruments Act is not maintainable in the eye of law.

4. At the outset, I am unable to persuade myself to accept the submission of the learned counsel for the petitioners, even assuming that the cheque was issued in the year 2010 as security, the blank cheques remains bill of exchange till it is filled. Therefore, the contention in that regard cannot be countenanced. The allegations in the complaint shows that as if the cheques were issued in the year 2017, the same was dishonoured. As the very allegations itself are based on factual aspects, it requires evidence. As the Negotiable Instruments Act is governed by special statutory presumption, it is for the accused to dislodge such presumption by bringing in the probabilities. Therefore, it is for the petitioners to raise all their defence before the trial Court by adducing evidence and it is for the trial Court to appreciate the same and decide the matter. 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 992 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.

5. 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 Petition is closed. It is for the petitioners to take all their defence before the trial Court. It is open to the accused to file an application under Section 436 of Code of Criminal Procedure before the trial Court. On such filing of the application within two weeks from the date of receipt of a copy of this



order by the petitioners, trial Court is directed to release the petitioners 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, they abscond, a fresh FIR can be registered under Section 229 A of the Indian Penal Code.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

msv/nr

To
The Judicial Magistrate No.1,
Poonamallee.

+2ccs to Mr.B.Janakiram, Advocate, S.R.No.3170

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NSK 09/02/2022