



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.01.2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No. 17357 of 2018
Crl.M.P.Nos. 8974 & 8975 of 2018

1.K.Venkidapathy
2.V.Samhidha

...Petitioners/Accused

Versus

K.S.Senathypathy

...Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the entire records in C.C.No.89 of 2017, on the file Judicial Magistrate No.VI, Coimbatore in so far as this petitioners are concerned and quash the same.

For Petitioners : Mr.P.Saravana Moorthy
(No appearance)

For Respondent : Mr.L.Mouli

O R D E R

This Petition has been filed to quash the proceedings in C.C.No.89 of 2017, filed against the accused for the offence under Section 138(b) of the Negotiable Instruments Act, on the file Learned Judicial Magistrate No.6, Coimbatore.

2. The crux of the allegation in the complaint is that the accused borrowed a sum of Rs.20,00,000/- and issued a cheque dated 29.11.2016. When the cheque was presented for encashment, the same was dishonoured with an endorsement "Insufficient funds". After issuing statutory notice, proceedings were initiated and the same is sought to be quashed mainly on the ground that the amount has not been borrowed and cheque has been misused which was given as a security in some other financial transaction. Hence, the proceedings sought to be quashed.



3. Once, a cheque is drawn on an account maintained by the drawer and the onus lies on the drawer to discharge the legal presumption attached to the negotiable instrument. In such view of the matter, whether the cheque was misused or there is no legally enforceable debt, are the factual matter of evidence and the same has to be decided by the trial Court after the trial. Hence, this Court is not inclined to quash the proceedings at this stage.

4. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

psa/ggs

To

The Judicial Magistrate No.VI,
Coimbatore.

+lcc to Mr.L.Mouli, Advocate SR. No.4125

Cr1. O.P. No. 17357 of 2018

MG (CO)
PR (18/02/2022)