



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRL.O.P.NO.19636 OF 2018 &
CRL.M.P.NO.10409 OF 2018

D.Jayakanthan

...Petitioner / Accused

Vs

Riyaz Khan

...Respondent / Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records and quash the proceedings of C.C.No.46 of 2018 on the file of the Fast Track Court, Ambattur.

For Petitioner : Mr.P.Sesubalan Raja

For Respondent : Notice sent,
Service awaited.

O R D E R

This petition has been filed to quash the charge sheet in C.C.No.46 of 2018 on the file of the Fast Track Court, Ambattur filed against the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act.

2. The complaint was filed on the premise that the present petitioner had borrowed a sum of Rs.3,00,000/- from the defacto complainant and towards repayment of the amount, issued the cheque in question dated 28.09.2017. When the cheque was presented for encashment, the same was dishonoured for the reason that 'payment stopped by the borrower'. After issuing statutory notice, the present complaint has been filed and the same is sought to be quashed.

3. The learned Counsel for the petitioner mainly submitted that the cheques in question was handed to the builder through one Khader Meeran, who was working under the builder and he was subsequently removed from his job. The builder has already lodged a complaint in the year 2016 that he has taken away the cheques in question and other documents of the builder. In the Police Station also the said Khader Meeran has given an undertaking to settle the matter. Thereafter, his relative has



filed the present complaint. Therefore, the complaint has been sought to be quashed. In other words, it is his contention that the was misused by some third party.

4. In view of the above contentions, this Court is of the view that such facts has to be proved only during trial. If the petitioner is able to prove that the cheque in question was originally stolen from the custody of the builder which was misused by a third party, that will be a ground to dislodge the legal presumption for rendering the complaint itself dismissal. Therefore, those facts have to be proved before the trial Court and this Court while sitting under Section 482 of Cr.P.C. direction, cannot decide the factual aspects and the disputed facts. Hence, this Court is not inclined to quash the proceedings at this stage.

5. Accordingly, this Criminal Original Petition is dismissed. However, considering the nature of the dispute and in view of the submission made by the learned Counsel for the petitioner, the personal appearance of the petitioner is dispensed with, except for receiving copies, for answering the charges, for questioning under Section 313 of Cr.P.C. and any other dates fixed by the trial Court. The trial Court is directed to dispose of the trial within three (3) months from the date of receipt of copy of this order. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

vrc / kbs

To

The Judge,
Fast Track Court,
Ambattur.

+2ccs to M/s.P.Sesubalan Raja, Advocate Sr.No.7152

Cr1.O.P.No.19636 of 2018 &
Cr1.M.P.No.10409 of 2018

AJS (CO)
RVM(25/02/2022)