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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2022

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CrI.O.P.No.18186 of 2019
and
CrI.M.P.No.9228 of 2019

1.Srinivasan @ Ponnusamy

2.Banumathi

... Petitioners/ Accused

Vs.

E.K.Palanisamy

... Respondent/Complainant

PRAYER: Criminal Original Petition had been filed under Section 482 of Cr.P.C, praying to call for the records on in C.C.No.87 of 2018 on the file of the learned Judicial Magistrate No.II, Gobichettipalayam and quash the same as illegal.

For Petitioners: Mr.S.Ganeshkumar
for M/s.G.K.Associates
Kiruthika Gokulakrishnan

For Respondent : Mr.D.Veerasekaran

ORDER

This petition had been filed to call for the records in CC.No.87 of 2018 on the file of the learned Judicial Magistrate No.II, Gobichettipalayam and quash the same as illegal.

2. The learned Counsel for the Petitioners submitted that the disputed cheque was issued on the Centurion Bank, Brough Road Branch, Erode District, which was merged with the Bank of Punjab in the year 2005. Subsequently, the Bank of Punjab was amalgamated with HDFC Bank. As per the complaint preferred by the Respondent/Complainant before the learned Judicial Magistrate No.II, Gobichettipalayam, the cause of



action arose on 20.06.2017. The cheque was presented on 30.06.2017 and it was returned on 11.08.2017 with an endorsement "invalid instrument". Hence, statutory notice was issued on 17.08.2017. Initially, reply was given on 30.09.2017, requesting the Complainant to intimate time and place where the cheque was issued and to verify the same. The cheque was examined by the Petitioners' and his Counsel on 25.09.2017. After examining the cheque, the Petitioners had caused the second reply notice, thereby denying the entire transaction. The learned Counsel for the Petitioners also invited the attention of this Court to the averments in the complaint in Column No.9, wherein the date was mentioned as 02.07.2019 and it was stuck off and interpolated as 11.08.2017. Therefore, the learned Counsel for the Petitioners submitted that the criminal complaint cannot be filed under Section 138 of Negotiable Instruments Act.

3. The learned Counsel for the Respondent/Complainant vehemently objects to the arguments of the learned Counsel for the Petitioners seeking to quash the criminal complaint in C.C.No.87 of 2018 pending on the file of the learned Judicial Magistrate No.II, Gobichettipalayam, on the ground that what are all submitted by the learned Counsel for the Petitioners are to be considered during trial through appreciation of evidence. The learned Counsel for the Respondent/Complainant further submitted that neither in the reply notice nor in this petition, the Petitioners had denied their signature in the cheque. Therefore, the ingredients of the complaint in C.C.No.87 of 2018 pending on the file of the learned Judicial Magistrate No.II, Gobichettipalayam gives presumption that the Petitioners had cheated the Respondent/Complainant. It is a subject matter of trial and this Court cannot exercise its extraordinary power under Section 482 of Cr.P.C. and quash the complaint. It is for the Petitioners to offer their explanation during trial and not by filing a petition to quash the criminal complaint.

4. On consideration of the rival submissions, the submission of the learned Counsel for the Respondent/Complainant is found acceptable. In the light of the rulings of the Hon'ble Supreme Court in the Judgment of State of Haryana and Ors. Vs. Ch.Bhajan Lal and Ors, reported in 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, the facts that are stated by the Petitioners can be considered only by the trial Court during trial on appreciation of evidence, but not by exercising the extraordinary power under Section 482 of Cr.P.C. by this Court

5. Accordingly, this Criminal Original Petition is dismissed with the direction to the learned Judicial Magistrate No.II, Gobichettipalayam, to proceed with the trial and dispose of the case within a period of three months from the date of



receipt of a copy of this order or from the date of uploading on the website. Consequently, connected Miscellaneous Petition is also closed.

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Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

dna

To

The Judicial Magistrate Court No.II,
Gobichettipalayam.

+1cc to M/s.Kiruthika, Advocate, S.R.No.29778

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and
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GSM(CO)
SB(27/05/2022)