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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.01.2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl.O.P.No.29320 of 2018

&

Crl.M.P.No.17204 of 2018

P.Subburaj ... Petitioner/Accused

Versus

V.Balraj ... Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C. to call for entire records pertaining to all further proceedings in C.C.No.2790 of 2017 pending on the file of the XIX Metropolitan Magistrate, Corporation Building, Chennai and quash the same as illegal, incompetent by allowing criminal original petition.

For Petitioner ... Mr.R.Jayaprakash

For Respondent ... Mr.P.Vasanth

O R D E R

This Criminal Original Petition has been filed to quash the proceedings initiated under Section 138 of the Negotiable Instruments Act, 1881 against the petitioner.

2.The crux of the allegations made in the complaint is that the petitioner/accused by giving false assurance to the de facto complainant that he could secure a job in the Tamil Nadu Government Office, demanded a sum of Rs.4,00,000/-. The de facto complainant also paid the said amount to the accused, but, the accused did not keep up his promise of securing the Government job. Hence, he had given two cheques to the de facto complainant



for repayment of the amount received by him. When the cheques were presented for collection, the same were returned as 'Funds Insufficient'. Hence the present petition.

3.The learned counsel for the petitioner submitted that the cheques were not issued for a lawful consideration, therefore, the same cannot be enforced in the eye of law. In support of his contention he relied upon the judgment of this Court in R.Sami Vs K.T.Harichandran (Crl.A.No.212 of 2006) reported in [2017 SCC Online Mad 19446] and the judgment of the Punjab High Court in Gurbaksh Singh Sodhi @ Gurbax Singh Vs Ranjit Singh reported in [2014 SCC Online P&H 433].

4.The above judgment in Crl.A.No.212 of 2006 arisen out of the acquittal passed by the trial Court, wherein this Court while considering Section 138 of N.I Act held that the issuance of the cheque is not supported by lawful consideration and hence, confirmed the order of the trial Court and dismissed the appeal.

5.It is to be noted that the very complaint indicates that the cheques were issued towards the repayment of the amount paid by the de facto complainant. Though the object of the payment is not enforceable in the eye of law, but the fact remains that the cheques were issued for repayment of the amount. Therefore, merely because the amount said to have been paid to secure the job is illegal, it cannot be said that seeking repayment of the same amount itself is illegal. The purpose for which the amount given may be illegal and unlawful, but the allegations appears that after receiving the money for securing job by giving false assurance, the accused had given cheques for return of the money. Such being the position, this Court is of the view that at this stage the question as to whether acquiring job by paying money is entirely lawful or not is not the subject matter. If any cheque is given to discharge the whole or part of any debt or liability, the complaint is maintainable. Whether the amount paid for illegal purpose is enforceable or comes within the ambit of liabilities, shall be decided before the trial Court by adducing evidence.

6.In such view of the matter, at this stage, I do not intend to quash the proceedings in C.C.No.2790 of 2017 pending before the learned XIX Metropolitan Magistrate, Corporation Building, Chennai. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.



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7. The Trial Court is directed to complete the trial within a period of four months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CS-V)

// True Copy //

Sub Assistant Registrar

ms/nsa

To

The XIX Metropolitan Magistrate,
Corporation Building, Chennai.

+1cc to Mr.P.Vasanth, Advocate SR.No.6533

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Crl.M.P.No.17204 of 2018

BS (CO)
CB (21/03/2022)