



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2022

C O R A M:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRL. O.P. NO. 30247 OF 2018

AND

CRL.M.P.NOS.17775 &17776 OF 2018

J.Mohanbabu

...Petitioner

Versus

B.A.Sakthivel

...Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to C.C.No.994 of 2017, on the file of District Munsif Cum Judicial Magistrate, Uthukottai and quash the same.

For Petitioner : Mr.V.Ramesh
for Mr.A.Selvendran

For Respondent : Mr.T.P.Sekar

O R D E R

This petition has been filed to quash the complaint filed for the offence under Section 138 of the Negotiable Instruments Act in C.C.No.994 of 2017 on the file fo the District Munsif cum Chief Judicial Magaistrate, Uthukottai.

2. Heard the learned counsel for the petitioner and learned counsel for the respondent.

3. Having gone through the materials available on record, this Court is of the considered view that 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 1992 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.

4. In such a 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. It is for the petitioner to take all his defence before the trial Court. The accused is directed to appear before the trial Court within two weeks from the date of receipt of a copy of this order and file an application under Section 436 of Code of Criminal Procedure. On such filing of the application, trial Court is directed to release the petitioner 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, he absconds, a fresh FIR can be registered under Section 229 A of the Indian Penal Code. The trial Court is also directed to dispose the case as expeditiously as possible, preferably within a period of six months from the date of receipt of copy of this Order. Connected Criminal Miscellaneous Petitions is closed.

Sd/-
Assistant Registrar (CS-V)

// True Copy //

Sub Assistant Registrar

ggs

To

The District Munsif Cum Judicial Magistrate,
Uthukottai.

+1cc to Mr.T.P.Sekar, Advocate Sr.No.1331

+1cc to Mr.R.Ashwanth, Advocate Sr.No.1533

Cr1. O.P. No. 30247 of 2018
and Cr1.M.P.Nos.17775 &17776 of 2018

MT (CO)
RVM(02/03/2022)