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Crl.O.P.Nos.18542 & 18546 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P Nos.18542 & 18546 of 2023

and

Crl.M.P.Nos.12339, 12340, 12344 & 12345 of 2023

Venkatesa Ramesh Para

...Petitioner in both OPs

vs.

Dr.Pruthvinath Kancherla
Rep by Power Agent J.Raja

...Respondent
in Crl.O.P.No.18542 of 2023

Prathyusha Kancherla
Rep by Power Agent J.Raja

...Respondent
in Crl.O.P.No.18546 of 2023

COMMON PRAYER:

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the proceedings in CC.No.2309 and 2308 of 2021 respectively pending on the file of XXV Metropolitan Magistrate, Egmore, Chennai 8.

For Petitioner

in both OPS

: Mr.Mandala Narasingsa Rao

For Respondent

in both OPs

: Mr.A.Gopinath,

Government Advocate for R1



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COMMON ORDER

These criminal original petitions have been filed to quash the proceedings in CC.No.2309 and 2308 of 2021 respectively pending on the file of XXV Metropolitan Magistrate, Egmore, Chennai 8.

2. The respondent has filed a complaint against the petitioner for offence under Section 138 of Negotiable Instruments Act. The same has been put to challenge in these petitions.

3. The learned counsel for the petitioner submitted that the Court below has not taken into consideration the return memo that was filed along with the complaint and according to the petitioner, it does not satisfy Section 2(8) of the Bankers Book's Evidence Act, 1891.

4. The learned counsel for the petitioner further relied upon the judgement of the Hon'ble Apex Court in ***Indian Bank Association and others vs. Union of India and others*** reported in ***2014 (5) SCC 590*** and he specifically relied upon paragraph No.23.1 in that judgement.



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5. The sum and substance of the contention raised by the learned counsel for the petitioner is that the Court below had mechanically taken cognizance of the complaint even without satisfying itself on the fulfilment of Section 2(8) of the Bankers Book's Evidence Act, 1891. The return memo has not been properly certified as Mandated in the said provision. The learned counsel for the petitioner also relied upon Section 146 of the Negotiable Instruments Act by contending that the bank's slip is a *prima facie* evidence to certain facts and it raises the presumption for the fact of dishonour of cheque based on the official mark that has been made by the Bank.

6. In the considered view of this Court, what is available before this Court is a copy that was furnished to the petitioner along with the complaint. As to whether the concerned bank had properly certified the return memo as Mandated under the Bankers Book's Evidence Act, 1891 is a matter of fact which could not be gone into in these quash petitions. This is an issue which will be considered by the trial Court at the time when the documents are marked.

7. This Court exercising its jurisdiction under Section 482 of CrPC does



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not go into questions of fact. This Court is of the considered view that the issue that has been taken cannot be decided in a petition under Section 482 of CrPC and it is purely a question of fact which requires appreciation of evidence.

8. In view of the above discussion, this Court does not find any merits in these quash petitions. Therefore, these criminal original petitions are dismissed. Consequently, the connected miscellaneous petitions are also closed.

18.08.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
nsa

To

- 1.The XXV Metropolitan Magistrate,
Egmore, Chennai 8
2. The Public Prosecutor,
Madras High Court,
Chennai 600 104..



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N. ANAND VENKATESH, J.

nsa

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