



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD) No.6001 of 2018

and

Crl.M.P(MD) Nos.2876 and 2877 of 2018

Balasundari

... Petitioner/Accused

Vs.

Kumar

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to the complaint in STC No. 1383 of 2017 on the file of the Judicial Magistrate Court, Nilakottai and quash the same

For Petitioner : Mr.T.Vadivelan

For Respondent : Mr.R.Narayanan

ORDER

This petition has been filed to quash the proceedings in STC No. 13836 of 2017 on the file of the Judicial Magistrate Court, Nilakottai having been taken cognizance for the offence under Section 138 of the Negotiable Instrument Act.

2. The learned counsel for the petitioner submitted that the respondent lodged complaint under Section 138 of the Negotiable Instrument Act as against the petitioner alleging that the petitioner borrowed a sum of Rs.3,00,000/- on 16.06.2017 and in order to repay the same he issued cheque for the said sum and the same was presented for collection on 23.06.2017 and the same returned dishonoured. Immediately he caused legal notice. On the request of the petitioner the cheque was again presented for collection on 26.06.2017 and again it was returned dishonoured on 19.09.2017. Thereafter he caused notice to initiate proceedings under Section 138 of the Negotiable Instrument Act. He further submitted that only to lodge a complaint for fresh cause of action he re-presented the very same cheque for collection and issued notice to the petitioner. On the second notice, the present complaint has been lodged which is nothing but clear abuse of process of law. He also relied upon the judgment of the Honourable Supreme Court of India in the case of **Sadanandan Bhadran -vs- Madhavan Sunil Case in JT 1998(6)SC**, wherein it is held as follows:

"10.Now the question is how the apparently conflicting provisions of the Act, one enabling the payee to repeatedly present the cheque and the other



giving him only one opportunity to file a complaint for its dishonour and that too within one month from the date of cause of action arises, can be reconciled. Having given our anxious consideration to this question, we are of the opinion that the above two provisions can be harmonised, with the interpretation that on each presentation of the cheque and its dishonour a fresh right and not cause of action-accrues in his favour. He may, therefore, without taking pre-emptory action in exercise of his such right under clause(b) of Section 138, 90 on presenting the cheque so as to enable him to exercise such right at any point of time during the validity of the cheque. But, once he gives a notice under clause(b) of section 138 he forfeits such right for in case of failure of the drawer to pay the money within the stipulated time he would be liable for the offence and the cause of action for filing the complaint will be reckoned from the day immediately following the day on which the period of fifteen days from the date of receipt of the notice by the drawer expires".

3. In the above case, the Honourable Supreme Court has held that without taking pre-emptory action in exercise of his such right under clause(b) of Section 138, go on presenting the cheque to as to enable him to exercise such right at any point of time during the validity of the cheque. But once gives a notice under clause(b) of Section 138 he forfeits such right for in case of failure of the drawer to pay the money within the stipulated time. But in the case on hand initially the cheque was presented on 23.06.2017 and after causing notice the petitioner requested the defacto complainant to represent the same cheque once again and only on the request of the petitioner it was represented again and the same was also dishonored on 19.09.2017, therefore the above judgment is not applicable to the case of the petitioner.

4. Recently, the Hon'ble Supreme Court of India held in respect of the very same issue in Crl.A.No.1572 of 2019 - Central Bureau of Investigation Vs. Arvind Khanna, wherein, it has been held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after summarising the evidence during trial. The very fact



that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

The above judgment is squarely applicable to this case and as such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C.

5. In view of the above discussions, this Court is not inclined to quash the proceedings in STC No. 13836 of 2017 on the file of the Judicial Magistrate Court, Nilakottai .

6. Accordingly, this criminal original petition is dismissed with the liberty to the petitioner to raise all the grounds before the trial Court. Consequently, connected miscellaneous petitions are also dismissed. Further the trial Court is directed to complete the trial within a period of six months from the date of receipt of a copy of this order. The personal appearance of the petitioner before the trial Court is dispensed with, except the dates on which, the trial Judge insisted the petitioner for his appearance.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

aav

To

The Judicial Magistrate Court, Nilakottai .

+1 CC to Mr.T. VADIVELAN, Advocate (SR-100214[F] dated 21/11/2019)

Crl.O.P.(MD) No.6001 of 2018

and

Crl.M.P(MD) Nos.2876 and 2877 of 2018

19.11.2019

MK (09.12.2019) 3P 3C

<https://hcservices.ecourts.gov.in/hcservices/>