



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 07.11.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No.9761 and 9824 of 2018

and

Crl.M.P. (MD) Nos.4338, 4379 and 4380 of 2018

1.R.Jeyalakshmi ... Petitioner/Accused in Crl.O.P.
No.9761 of 2018

1.S.Rajkumar ... Petitioner in Crl.O.P.
No.9824 of 2018

Vs

Malathi ... Respondent/Complainant in both
petitions

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records of the private complaints in S.T.C.Nos.302 and 303 of 2015 respectively on the file of the Fast Track Court No.II, Madurai and quash the same by allowing these criminal original petitions.

For Petitioners : Mr.J.William Christopher
in both petitions

For Respondents : Mr.C.M.Arumugam
in both petitions

O R D E R

These petitions have been filed to quash the criminal proceedings in in S.T.C.Nos.302 and 303 of 2015 respectively on the file of the Fast Track Court No.II, Madurai insofar as the respective petitioners are concerned.

2.The learned counsel appearing for the petitioners would submit that both the petitioners are wife and husband respectively. The respondent filed complaints with the allegation that the both the petitioners borrowed a sum of Rs.25 lakhs each for their business purpose on various dates. In order to repay the said amount, both the petitioners have issued cheques on 15.05.2014 and 09.06.2014 respectively. However, when the cheques were presented, they were returned dishonoured. Therefore, after causing statutory notice, the respondent initiated proceedings under Section 138 of the Negotiable Instrument Act.



3.The learned counsel for the petitioners would further submit that at the time of issuing cheque, the husband/petitioner in Crl.O.P.(MD) No.9824 of 2018 was not in India, and he was in Dubai. He also disputed the issuance of cheque as well as the signature of the cheque. Insofar as the wife/petitioner in Crl.O.P.(MD) No.9761 of 2018 is concerned, though she admitted the signature, she denied the issuance of cheques. Therefore, they prayed for quashing of the criminal complaints initiated as against the petitioners.

4.The learned counsel appearing for the respondent submitted that there are materials available to proceed with the case as against the petitioners herein and at the threshold, the criminal proceedings cannot be quashed and the charges framed against the petitioners have to be gone into a full-fledged trial and hence, he prayed for dismissal of the petition.

5. Heard both sides and perused the materials available on records.

6.The points raised by the petitioners can be considered only before the trial Court during the trial. Since all the points raised by the petitioners are mixed question of facts, it cannot be considered by this Court under 482 of Cr.P.C. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.1572 of 2019 - Central Bureau of Invstigation Vs. Arvind Khanna***, dated 17.10.2019 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 appreciating 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."

7. Considering the above said judgments, this Court is of the



view that there are specific allegations as against the petitioners. The points raised by the learned counsel appearing for the petitioners could be decided only at the time of trial. Further, the mixed question of facts can not be considered by this Court that too under Section 48 of Cr.P.C. Therefore, the above judgments are squarely applicable to this case and as such, the points raised by the petitioners cannot be considered by this Court under Section 482 Cr.P.C.

8.In view of the above discussions, this criminal original petitions are dismissed. Consequently, connected miscellaneous petitions are also dismissed. The trial Judge is directed to complete the trial and disposed of the cases in S.T.C.Nos.302 and 303 of 2015 respectively on the file of the Fast Track Court No.II, Madurai, within a period of six (6) months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

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To

The Fast Track Court No.II, Madurai

+1.CC. To Mr.C.M.Arumugam, Advocate in SR No.97026

Order made in
CRL.O.P (MD) Nos.9761 and 9824 of 2018
07.11.2019

_KM/ (29.11.2019) 3P 3C