



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 24.10.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No.15097 of 2019

and

Crl.M.P. (MD) Nos.9022 and 9023 of 2019

WEB COPY

T.S.Nazir Ahmed

... Petitioner

Vs

H.D.B.Financial Services Ltd.,
rep. by its Associate Legal/Authorised Signatory
R.Madhukumar
No.50/1, Palanganatham Bye Pass Road,
V.M.R. Complex,
Vasanthanagar,
Madurai.

... Respondent

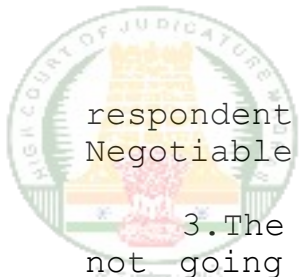
PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the impugned proceedings in S.T.C.No.726 of 2018 on the file of the Judicial Magistrate No.1, Fast Track Court at Magisterial Level, Madurai and quash the same as illegal.

For Petitioners : Mr.S.Jayachandran

O R D E R

This petition has been filed to quash the proceedings in S.T.C.No.726 of 2018 on the file of the Judicial Magistrate No.1, Fast Track court at Magisterial Level, Madurai, having been taken cognizance for the offence under Section 138 of the Negotiable Instrument Act.

2.The learned counsel appearing for the petitioner submitted that the petitioner borrowed a sum of Rs.4,20,00,000/- from the respondent in the year 2015 and due to financial crisis and also external factors like demonetization, introduction of GST etc. he would not be able to repay the same. Therefore, the respondent initiated proceedings under the SARFAESI Act. Accordingly, the possession of the property, which was given as collateral security has been brought for auction and auction proceedings are going on. At the time of borrowing loan, so many cheques were obtained as collateral purpose and one of the cheque was now filled up by the respondent and presented for collection. When the respondent initiated proceedings under SARFAESI Act and all properties are also attached and the physical possession also has been taken, the



respondent ought not to have initiated proceedings under the Negotiable Instrument Act.

3.The learned counsel further submitted that the property is not going to be auctioned and as such, the entire amount to be realised by the sale of the property. The property which have been attached by the respondent also worth about more than 6 crores. Even the respondent fixed upset price more than 6 crores. Therefore, the preliminary proceedings cannot be sustained as against the petitioner under the Negotiable Instrument Act. Therefore, he prayed for quashing the criminal proceedings.

4.Heard the learned counsel appearing for the petitioner and perused the materials available on records.

5.It is seen that the petitioner borrowed a sum of Rs.4,20,00,000/- for his ready made garments business run in the name and style of "Kurunji Classic" at Tanjore. Thereafter, the petitioner failed to repay the said loan amount due to various reasons. Therefore, the respondent initiated proceedings under SARFAESI Act and now, it seeks that the physical possession of the property has been taken by the respondent and auction process is also pending.

6.According to the defato complainant/respondent, after borrowing the loan, in the first week of September 2018, when the respondent demanded the repayment of the loan amount, the petitioner/accused issued a cheque for a sum of Rs.24,75,510/- and when it was presented for collection on the instructions of the petitioner, it was returned as Account Blocked. Therefore, after issuance of statutory notice under Section 138 of Negotiable Instrument Act, the respondent proceeded with the complaint in S.T.C.No.726 of 2018. Therefore, the present proceedings cannot be construed as preliminary proceedings under the SARFAESI Act.

7.Admittedly, the possession of the property has been taken by the respondent and the same has not been auctioned so far. Therefore, the ground raised by the petitioner cannot be considered here. It is also mixed question of fact and it cannot be considered here under Section 482 of Cr.P.C. In this regard, 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 Invstigation 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 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."

The above judgment is also squarely apply to this case and as such, this Court is not inclined to quash the criminal proceedings as against the petitioner,.

8. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are also dismissed. However, the petitioner is at liberty to produce all the materials before the trial Court and the trial Court viz., the Judicial Magistrate No.1, Fast Track Court at Magisterial Level, Madurai is directed to dispose of the case in S.T.C.No.726 of 2018, 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 (co)

// True Copy //

Sub Assistant Registrar (CS)

Arul

To

The Judicial Magistrate No.1,
Fast Track Court at Magisterial Level,
Madurai

Order made in
CRL.O.P (MD) No.15097 of 2019
24.10.2019

VB (08.11.2019) 3P 2C