



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CrI.O.P.(MD) No.11490 of 2018

and

CrI.M.P(MD) Nos.5208 and 5209 of 2018

M.Vijayakumar

...Petitioner/Accused

Vs.

The Daily Thanthi Trichirappalli
Rep. by its Power of Attorney Agent
C.Murugesan

...Respondent/Petitioner

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in C.C.No. 100 of 2016 on the file of the learned Judicial Magistrate No.II, Tiruchirappalli and quash the same.

For Petitioner : Mr.R.Rajaraman

ORDER

This petition has been filed to quash the proceedings in C.C.No. 100 of 2016 on the file of the learned Judicial Magistrate No.II, Tiruchirappalli for the offence under Section 138 of the Negotiable Instrument Act.

2. The learned counsel for the petitioner submitted that there is absolutely no legally enforceable debt by the petitioner to the respondent herein. There is master and servant relationship between the petitioner and the respondent herein. He further submitted that the admittedly the petitioner is working as a part time employee under the respondent /defacto complainant and as such there is no legally enforceable debt by the petitioner towards the respondent herein. He further submitted that the complaint lodged through power of attorney, whereas the legal notice issued by the respondent was not by the power of attorney. Therefore he sought for quashing the entire proceedings.

3. The respondent lodged complaint under Section 138 of the Negotiable Instrument Act as against the petitioner alleging that the petitioner was working as a part time employee in the respondent company and he was also canvassing advertisement for the newspaper due to which the petitioner is liable to pay a sum of Rs.2,58,000/-. Inorder to repay the same, he issued cheque and the



said cheque was presented for collection and it was dishonored and as such he initiated proceedings under Section 138 of the Negotiable Instrument Act.

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 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 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.

5. .In view of the above discussions, this Court is not inclined to quash the proceedings in C.C.No. 100 of 2016 on the file of the learned Judicial Magistrate No.II, Tiruchirappalli .

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.

Sd/-

Assistant Registrar (w)

// True Copy //

Sub Assistant Registrar(CS)



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To

The Judicial Magistrate No.II, Tiruchirappalli

+1 CC to M/s.R. RAJARAMAN, Advocate (SR-98315[F] dated 14/11/2019)

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and
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KK/SAR/05.12.2019/3P-3C/