



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.12039 of 2018

and

Cr.M.P (MD)No.5465 of 2018

P.Nelson

...Petitioner/Accused

Vs.

D.Edwin Jeya Raj

...Respondents/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records relating to S.T.C.No.254 of 2018 on the file of the learned Judicial Magistrate, Fast Track Court, Eraniel.

For Petitioner : Mr.J.Chakaravarthi
for Mr.T.Muruganandam
For Respondent : Mr.S.C.Herold Singh

O R D E R

This petition has been filed to quash the proceedings in S.T.C.No.254 of 2018 on the file of the learned Judicial Magistrate, Fast Track Court, Eraniel.

2.The learned counsel for the petitioner would submit that the statutory notice does not contain all the particulars as contemplated under Section 138 of Negotiable Instruments Act. Therefore, he sought to quash the entire proceedings.

3.The legal notice issued by the respondent under Section 138 of Negotiable Instruments Act is as follows:-

'That my client says that you are a relative of my client and to meet your financial crisis you borrowed Rs.14,00,000/- (Rupees Fourteen Lakhs Only) from my client in several occasions in the year 2017 from my client's house. You repay a sum of Rs.6,00,000/- on 01.05.2017 and the same date you issued a South Indian Bank Cheque drawn on the Anna Nagar Branch, Chennai bearing No.274290, dated 16.05.2017. The balance amount will be paid shortly. And also you promised to my client that honouring the cheque on the presentation of the above said dates.'



4. On perusal of the said notice, this Court finds that to repay the sum of Rs.6,00,000/-, the petitioner issued a cheque for the said sum. In fact, after receipt of the said notice, the petitioner failed to send reply stating that a sum of Rs.6,00,000/- has already been repaid by the petitioner. That apart all the points would be considered only by the trial Court during course of trial. Therefore, this Court cannot go into all the points raised by the petitioner under Section 482 Cr.P.C.

5. 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 Investigation Vs. Arvind Khanna**, wherein, it has been held as follows:

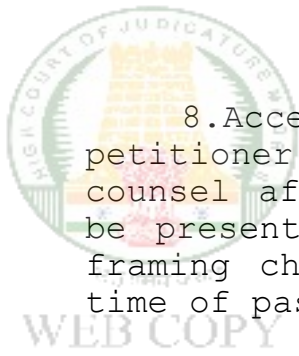
"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several 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 the fact of the present case.

6. Hence, the Criminal Original Petition is dismissed. However, the Judicial Magistrate, Fast Track Court, Eraniel, is directed to proceed with the trial and complete the same within a period of six months from the date of receipt of a copy of this order.

7. At this juncture, the learned Counsel for the petitioner submitted that the presence of the petitioner before the Trial Court may be dispensed with.



8.Accepting the said submission, the personal appearance of the petitioner is dispensed with and he shall be represented by a counsel after filing appropriate application. The petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment.

9.Accordingly, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)

vsd

To

The Judicial Magistrate,
Fast Track Court,
Eraniel.

+1 CC to Mr.T. MURUGANANTHAM, Advocate (SR-98322[F] dated 14/11/2019)

+1 CC to Mr.S.C.HEROLD SINGH, Advocate (SR-98662[F] dated 15/11/2019)

**Crl.O.P. (MD)No.12039 of 2018
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VB(17.12.2019) 3P 4C