



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE **G.K. ILANTHIRAIYAN**
CrI.O.P.(MD) No.16925 of 2019

and
CrI.M.P(MD) Nos.10026 and 10027 of 2019

Malaiyandi @ Ashok

...Petitioner/Accused

Vs.

Renganathan

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to the case in STC No. 180 of 2019 on the file of the learned Judicial Magistrate No.II (Fast Track Court) Madurai and quash the same.

For Petitioner : Mrs.A.Banumathy

ORDER

This petition has been filed to quash the proceedings in STC No. 180 of 2019 on the file of the learned Judicial Magistrate No.II (Fast Track Court) Madurai having been taken cognizance for the offence under Section 138 of the Negotiable Instrument Act.

2. The learned counsel for the petitioner would submit that the respondent lodged complaint under Section 138 of the Negotiable Instrument Act alleging that the petitioner borrowed a sum of Rs.2,75,000/- (Rupees Two lakhs and Seventy Five thousand only) in the month of September 2017. In order to repay the said cheque amount he issued a cheque and the same was presented for collection and returned for reason 'insufficient funds'. After causing statutory notice the respondent lodged complaint and the same has been taken cognizance in STC No.180 of 2019. He further submitted that he borrowed the said amount only from the brother of the respondent and he never received any amount from the respondent and never issued any cheque.

3. Recently, the Hon'ble Supreme Court of India held in respect of the very same issue in CrI.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 petitioner cannot be considered by this Court under Section 482 Cr.P.C.

4. In view of the above discussions, this Court is not inclined to quash the proceedings in STC No. 180 of 2019 on the file of the learned Judicial Magistrate No.II (Fast Track Court) Madurai .

5. 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 ()

// True Copy //

Sub Assistant Registrar(CS)

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To

The Judicial Magistrate No.II (Fast Track Court) Madurai .

Crl.O.P.(MD) No.16925 of 2019

and

Crl.M.P(MD) Nos.10026 and 10027 of 2019

19.11.2019

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