

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.08.2020

CORAM

THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.820 of 2020
and Crl.M.P.Nos.468 & 469 of 2020

N.Govindaraj
S/o. Narayana Samy,
No.2/411, East Street,
Kakkivadenpatti,
Sivakasi Taluk,
Virudhunagar District.Petitioner/Accused

Vs

M/s. Standard Fire Works Pvt., Ltd.,
Through its Power Agent,
Amos Jeyasing, Son of Vairamani,
Office at 1/3, Thiruthangal Road,
Sivakasi, Virudhunagar District,
Branch Office at 43, Anderson Street,
Chennai.Respondent/Complainant

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records with respect to complaint in C.C.No.1487 of 2019 on the file of IV Fast Track Metropolitan Court, George Town, Chennai and quash the same.

For petitioner : Mr.S.Marshall
For Respondent : Mr.G.Mariappan

सत्यमेव जयते
ORDER

This petition has been filed to quash the proceedings in C.C.No.1487 of 2019 on the file of the IV Fast Track Metropolitan Court, George Town, Chennai, thereby taken cognizance for the offences under Section 138 r/w 142 Negotiable Instrument Act, (herein after referred to as "NI Act") as against the petitioner.

2. The learned Counsel appearing for the petitioner would submit that the respondent lodged complaint as against the petitioner herein under Section 138 of NI Act. He further submitted that the petitioner was already instructed the respondent not to present the cheque by the communication dated

20.06.2018 and even then the respondent presented the cheque for collection on 15.09.2018. He further submitted that the petitioner already filed application to declare himself as insolvent and the same also taken on file by the learned Principal District Judge, Srivilliputtur in I.P.No.5 of 2018. In fact the petitioner also issued notice dated 20.06.2018, and categorically informed about the pendency of the insolvency proceedings and called upon the respondent not to deposit the cheques which were obtained under threat and coercion. Therefore, there is no offence made under Section 138 of NI Act as against the petitioner. Further, the petitioner does not have any means and wherewithal and the application to adjudge him as insolvent in I.P.No.5 of 2018, the petitioner cannot be burdened with compliance under Section 143-A of the NI Act. Therefore, he sought for quashment of the entire proceeding as against the petitioner.

3. Per contra, the learned counsel appearing for the respondent would submit that there are specific allegations as against the petitioner and the pendency of the insolvency proceeding is not an impediment for the respondent to initiate proceedings under Section 138 of NI Act as against the petitioner. Further all the points raised by the petitioner have to be considered only during the trial before the trial Court and it cannot be considered here that too under Section 482 of Cr.P.C. Therefore, he sought for dismissal of the quash petition.

4. Heard Mr.S.Marshall, learned counsel appearing for the petitioner and Mr.G.Mariappan, learned counsel appearing for the respondent.

5. The petitioner is an accused in the complaint lodged by the respondent under Section 138 of NI Act. The respondent lodged complaint alleging that the respondent is a manufacturer of crackers and supplying the same to the wholesalers and retailers. The petitioner is being retailer of cracker, purchased the crackers on various dated from the year 2017, thereby the petitioner is liable to pay a sum of Rs.1,86,00,000/- to the respondent herein. Hence, the petitioner had entered into an agreement on 24.04.2018 and he agreed to pay the due amount. In order to pay the part of the above amount, the petitioner issued cheque for a sum of Rs.15,00,000/-. The said cheque was present for collection and the same was returned dishonour for the reason that "Funds insufficient". It was duly informed to the petitioner herein and after his instruction, the cheque was once again presented for collection. Again it was returned dishonour for the reason that "Drawer's signature differ". Therefore after issuing statutory notice, the respondent initiated the present proceedings for the offences

punishable under Section 138 of NI Act as against the petitioner.

6. Though the petitioner filed petition to declare him as insolvent in I.P.No.5 of 2018, it is no way barred for the respondent to proceed with the complaint for the offences under Section 138 of NI Act. Further, the learned counsel appearing for the petitioner would submit that the alleged cheques were obtained from the petitioner under threat and coercion. However, there is no iota that the cheques were obtained under threat and coercion and also there is no complaint lodged by the petitioner before the police officials regarding the said coercion. Therefore, the present petition is devoid of merits and liable to be dismissed.

7. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in Crl.A.No.579 of 2019 dated 02.04.2019 in the case of Devendra Prasad Singh Vs. State of Bihar & Anr., as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

8. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in Crl.A.No.1572 of 2019 dated 17.10.2019 in the case of 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."

9. Further the Hon'ble Supreme Court of India also held in the order dated 02.12.2019 in CrI.A.No.1817 of 2019 in the case of M.Jayanthi Vs. K.R.Meenakshi & anr, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are 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.

10. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.1487 of 2019 on the file of IV Fast Track Metropolitan Magistrate Court, George Town, Chennai. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar

//True Copy//

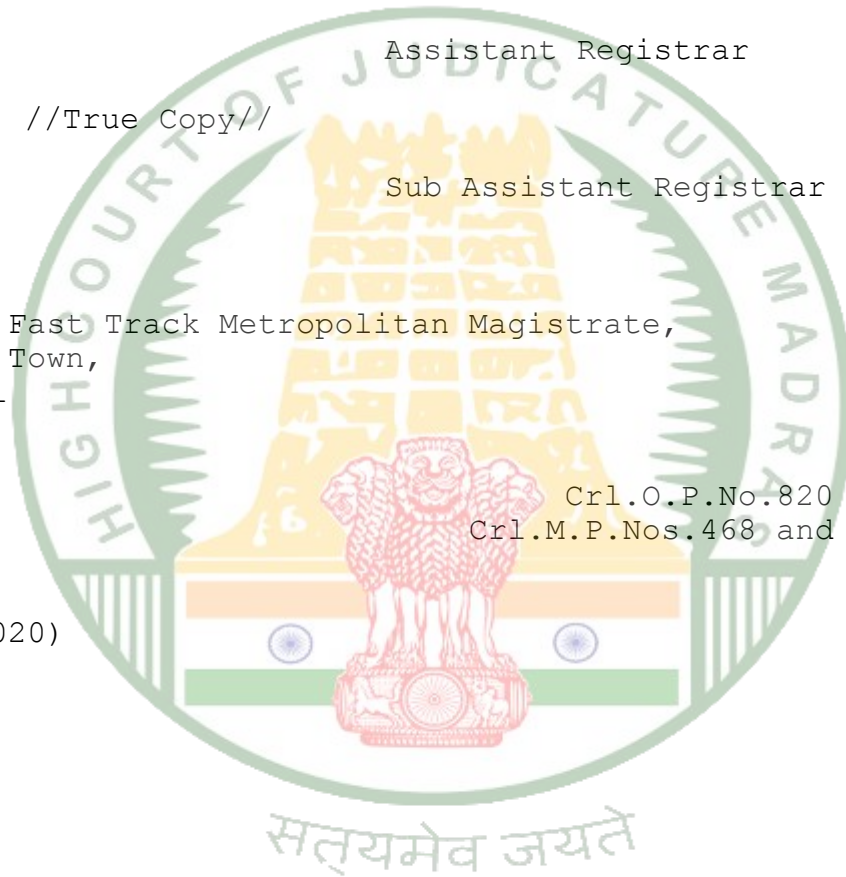
Sub Assistant Registrar

To

1. The IV Fast Track Metropolitan Magistrate,
George Town,
Chennai

Crl.O.P.No.820 of 2020 and
Crl.M.P.Nos.468 and 469 of 2020

KJ(CO)
RV(24/9/2020)



WEB COPY