

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.2505 of 2020
and
CrI.M.P.Nos.1528 and 1529 of 2020

M/s Sterling Estate & Properties Ltd.,
Rep by its Managing Director,
Mr.Ramo Rao Kanduri Lakshmi Venkata
"Sterling Point"
No.124, G.N. Chetty Road,
T.Nagar, Chennai - 600 017. ...Petitioner

.Vs.

M/s Nakoda Enterprises
Proprietrix : Mrs. Priti Nahar,
Rep By its P.A. Mr.Abhinandan
No.168 Old No.161, 1st Floor,
Govindappa Naicken Street, AVC Plaza,
Chennai - 600 001.Respondent

PRAYER: Criminal Original Petition filed under Section 482
Cr.P.C. praying to call for the entire records in CCNo.490/ 2018
on the file of the IV Fast Track Magistrate Court, George Town.
Chennai and quash the proceedings against the petitioner.

For Petitioner : Mr.K.Sarathkumar
For Respondent : Mr.S.Sai Raman

ORDER

This petition has been filed to quash the proceedings in
C.C.No. 490 of 2020 on the file of the learned IV Fast Track
Magistrate Court, George Town. Chennai.

2. The learned counsel for the petitioner would submit that
there are totally 4 accused, and the petitioner herein is
arrayed as A3. According to the respondent, the petitioner
purchased electrical goods on credit basis and in order to pay
the dues, the petitioner and other accused presented four
cheques for a sum of Rs.3,25,687/- and all the cheques when
presented for collection were returned as "Funds Insufficient" .
After issuing statutory notice, the respondents initiated
proceedings for the offence punishable under Section 138 of the

Negotiable Instruments Act. While pending the complaint, the petitioner settled the entire due amount, by issuing seven cheques as follows:

S.No.	Date	Ban Name	Invoice No.	Amount
1	20.04.2018	HDFC	097	Rs.40,000/-
2	30.06.2018	SBI	93046	Rs.40,000/-
3	02.08.2018	IOB	306421	Rs.14,733/-
4	17.08.2018	IOB	306422	Rs.48,257/-
5	05.09.2018	IOB	306423	Rs.50,000/-
6	15.10.2018	IOB	306424	Rs.58,990/-
7	15.10.2018	IOB	306425	Rs.73,707/-
			Total	Rs.3,25,687/-

Accordingly, the entire amount of Rs.3,25,687/- has been duly repaid and the respondent also duly acknowledged the same. Even then, the respondent herein without withdrawing the complainant proceeded further. Therefore, the petitioner seeks for quashment for the entire proceedings.

3. Per contra, the learned counsel for the respondent submitted that there are totally 4 accused, in which the petitioner herein is arrayed as 3rd accused, representing the first accused company as a Managing Director. All the accused persons are incharge of the first accused company and they used to purchase electrical goods from the respondent on credit basis. In order to settle the due amount, the accused persons have issued four cheques to the tune of Rs.3,25,687/- All the cheques were presented for collection and the same was returned dishonoured for the reasons "Funds Insufficient" by a return memo dated 29.11.2017. After issuance of statutory notice dated 08.12.2017, the respondent lodged a complaint under Section 138 of Negotiable instruments Act. Pending the complaint, the petitioner issued another 7 cheques for a total sum of Rs.3,25,689/- in respect of a different purchase. He would further submit that in respect of earlier dues, the above amount was given and in respect of the present case, no amount has been settled by the petitioner. He also vehemently disputed the amounts paid by the petitioner and therefore, he sought for dismissal of the present petition.

4. Heard M.R. Ramamoorthy, the learned counsel appearing for the petitioner and Mr.S. Sairaman the learned counsel appearing for the respondent.

5. On perusal of records it is seen the respondent is the

complainant who lodged a complaint for the offence punishable under Section 138 of Negotiable Instrument Act as against the petitioner and others. The petitioner herein arrayed as A3 who is representing the first accused company, as Managing Director. On purchase of the Electrical goods, the petitioner and others issued 4 cheques to the tune of Rs.3,25,687/- to the respondent. All the cheques were returned dishonoured, and the respondent proceeded with the complaint for the offence punishable Under Section 138 of Negotiable Instruments Act. According to the petitioner, pending the complaint the petitioner issued another seven cheques to the tune of Rs.3,25,689/- and all the cheques were encashed by the respondent. Therefore, the entire dues as alleged in the complainant have been settled by the petitioner and even then, the respondent refused to withdraw the complainant. Whereas, the learned counsel for the respondent would submit that pending the complaint, cheques were issued in respect of other dues pertaining to the cheques in the present case. Therefore, the disputed fact is that the entire amount has been settled by the petitioner.

6. 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.

7. 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."

8. 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.

.....

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 disputed question of the facts cannot be considered by this Court in this petition filed under Section 482 of Cr.Pc. Hence, all the grounds raised by the petitioner can be considered by letting evidence during trial before the Trial Court.

9. Therefore, the petition is devoid of merits and dismissed. Consequently connected miscellaneous petitions are closed. However, the petitioner is at liberty to raise all the grounds before the Trial Court in the manner known to law. The Trial Court is directed to dispose the case within a period of nine months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The IV Fast Track Magistrate Court,
George Town. Chennai.
2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Sairam, Advocate, Sr.No.30187

Cr1.O.P.No.2505 of 2020
and

Cr1.M.P.Nos.1528 and 1529 of 2020

ajs (co)
rr ii (22/10/2020)