

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.07.2020

CORAM

THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.6578 of 2018  
and  
Crl.M.P.Nos.3370 and 3371 of 2018

O.K.Venkatesulu

... Petitioner

Vs

1. S.Viswanathan
2. Dhanalakshmi Concrete Products  
represented by its Partner O.K.Venkatesulu
3. K.D.V.Ramanamurthy  
Partner : Dhanalakshmi Concrete Products ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the entire records connected with the case in C.C.No.1396 of 2016 on the file of the learned VII Metropolitan Magistrate, George Town, Chennai and quash the same.

For Petitioner : M/s.E.Ramanna  
(No appearance)

For Respondent No.1 : R.Sivaprakasam

ORDER

This petition has been filed to quash the case in C.C.No.1396 of 2016 on the file of the learned VII Metropolitan Magistrate, George Town, Chennai.

2. It is averred that the cheque was obtained by the first respondent/defacto complainant in the year 2013 and it was deposited for collection in the year 2016; therefore, no offence is made out as against the petitioner under Section 138 of Negotiable Instruments Act. Further averred that the entire amount has been settled by the petitioner in the year 2015 itself and there is absolutely no necessity for the petitioner to issue any cheque to the first respondent/defacto complainant herein. In fact, the Deed of Floating Charge was executed on

07.09.2013 and on the same day, the alleged cheque was issued to the respondent herein. Therefore, the entire amount was settled and only to grab money from the petitioner, the respondent built up the cheque and presented after four years from the date of issuing of cheque. Therefore, there is absolutely no legally enforceable debt to the respondent herein.

3. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in CrI.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.

4. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in CrI.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."

5. Further the Hon'ble Supreme Court of India also held in the order dated 02.12.2019 in Crl.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.

6. All the grounds raised by the petitioner are factual aspects and are mixed question of facts and therefore, it cannot be considered in quash petition filed under Section 482 of Cr.P.C. All the facts can be considered only during the trial. The petitioner is at liberty to raise all the grounds before the

trial Court. Therefore, this Court is not inclined to quash the proceedings initiated by the respondent for the offence punishable under Section 138 of Negotiable Instruments Act.

7. Accordingly, the Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed. However, considering that the CC is of the year 2016, 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 (CS-III)

//True copy//

Sub Assistant Registrar

mra

To

1. VII Metropolitan Magistrate,  
George Town, Chennai.
2. The Public Prosecutor,  
High Court, Madras.

+1cc to Mr.R.Sivaprakasam, Advocate SR.No.24796

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and

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RSV (CO)  
GMY (03/08/2020)

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