

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2020

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THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.7565 of 2018

and

Crl.M.P.Nos.3907 and 3908 of 2018

B.Venkatachalapathy ... Petitioner/Accused

Vs

N.T.Gopalakrishnan ... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in C.C.No.73 of 2017 on the file of the Fast Track Judicial Magistrate, Thiruthuraipoondi and quash the same as illegal.

For Petitioner : M/s.Greetha Senthilkumar
(No appearance)

For Respondent : M/s.Vimal B.Crimson

ORDER

This petition has been filed to quash the proceedings in C.C.No.73 of 2017 on the file of the Fast Track Judicial Magistrate, Thiruthuraipoondi.

2. It is seen that the petitioner is an accused in the complaint lodged by the respondent in CC No.73 of 2017 alleging for the offences punishable under Section 138 of Negotiable Instruments Act. It is averred in the petition that the respondent is a pawn-broker and during the month of October 2015, the father of the petitioner fell ill and the petitioner borrowed a sum of Rs.20,000/- from the respondent. At the time of borrowal of amount, he handed over two cheques for the purpose of security. In the month of December 2016, the petitioner returned the amount along with interest to the tune of Rs.25,000/- to the respondent herein. Even though, the respondent refused to return the cheques, which were given at the time of borrowal as security. It is further averred that the respondent also assured the petitioner that he would return the cheques when the petitioner returns the balance amount of Rs.5,000/-. Therefore, the offence under Section 138 of the

Negotiable Act is not at all made out as against the petitioner. Hence, he prayed for quashing the proceedings in C.C.No.73 of 2017.

3. Heard Mr.Vimal B.Crimson, learned counsel appearing for the respondent.

4. 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.

5. 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."

6. 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.

7. The grounds raised by the petitioner are question of facts and cannot be considered in the quash petition filed under Section 482 of Cr.P.C. All the points can be considered only by the trial Court during the trial after letting evidence. Therefore, this petition is devoid of merit.

8. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.73 of 2017 on the file of the Fast Track Judicial Magistrate, Thiruthuraipoondi. The petitioner is at liberty to raise all the grounds before the trial Court. Considering that the CC is of the year 2017, 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.

9. Accordingly, the Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1. The Fast Track Judicial Magistrate,
Thiruthuraipoondi.
2. The Public Prosecutor,
High Court, Madras.

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