

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.08.2020

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.OP.No.4072 of 2020
and
Crl.MP.No.2346 of 2020

J.Suguna

... Petitioner

.Vs.

P.Senthilnathan

... Respondent

Prayer :- The Criminal Original Petition filed under Section 482 Cr.P.C to call for the records pertaining to S.T.C. No.7645/2019 on the file of Judicial Magistrate No.IV, Salem and quash the same.

For Petitioner : M/s.D.Lakshmidaran

For Respondent : Mr.K.V.Sridharan (No Appearance)

ORDER

This petition has been filed to quash the proceedings in S.T.C.No.7465 of 2019 on the file of Judicial Magistrate No.IV, Salem. There are totally three accused persons for the offences punishable under Section 138 and 142 of the Negotiable Instruments Act, in which petitioner is arrayed as third accused. According to the defacto complainant, the first accused is a Partnership firm and the second and third accused are partners. The accused persons requested the respondent to arrange a loan for interest for the business development of the first accused firm. On the said request, the respondent herein arranged an amount of Rs.34,50,000/- and same paid to the accused persons and they also executed the promissory note in favour of the respondent herein and agreed to repay the principal amount with interest of 12% per annum. Thereafter, the petitioners have issued cheque for the said sum including interest and the same was presented for collection and it was returned dishonored for the reason that the account itself closed. Immediately, the respondent issued statutory notice and on receipt of the same, no reply notice was issued by the accused persons. Therefore, the respondent initiated proceedings under Section 138 of N.I.Act as against all the accused persons.

2. The learned counsel for the petitioner would submit that the petitioner is a sleeping partner of the first accused

partnership firm and she is nothing to do with the day-to-day activities of the partnership firm. Even according to the complainant, the second accused viz., the husband of the petitioner herein actively participated in the day-to-day activities of the partnership firm and he is the signatory of the alleged cheque and as such, petitioner is no way connected with the partnership firm and she is not liable to be punished for the offences under Section 138 N.I.Act. Hence, he prayed to quash the entire proceedings.

3. Heard Mr.D.Lakshmidaran, learned counsel for the petitioner and no one is appeared on behalf of the respondent.

4. It is seen that the petitioner is also one of the partner of the first accused partnership firm. Though, she is a wife of the second accused she is also equally responsible for the offence committed by the firm and the impugned cheque was issued on behalf of the first accused firm. Though the second accused is the signatory of the cheque, the petitioner along with her husband received a sum of Rs.34,50,000/- and also executed a promissory note in favour of the respondent. Therefore, she is also actively participated in the day-to-day business affairs of the first accused and she is also liable to be prosecuted for the offence under Section 138 of N.I.Act. Therefore, this Court is not inclined to quash the proceedings.

5. 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.

6. 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."

7. 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 and as such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C.

8. In view of the above discussion, this Court is not inclined to quash the proceedings in S.T.C.No.7465 of 2019 on the file of Judicial Magistrate No.IV, Salem. The petitioner is at liberty to raise all the grounds before the trial Court. Considering the facts and circumstances of the case, the personal appearance of the petitioner is dispensed with and she shall be represented by a counsel after filing appropriate application. However, the petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment.

9. Accordingly, this Criminal Original petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

Judicial Magistrate No.IV,
Salem.

सत्यमेव जयते Cr1.OP.No.4072 of 2020

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