

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.4734 of 2020
and
Crl.M.P.Nos.2698 and 2699 of 2020

V. Tamilarasan ...Petitioner/Accused

Vs.

M. Ravi ...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. Praying, to call for the records in STC.No.753 of 2019 pending on the file of the Judicial Magistrate No.1, Krishnagiri and quash the same.

For Petitioner : Mr.T.Panchatsaram

O R D E R

This petition has been filed to quash the proceedings in S.T.C.No.753 of 2019 on the file of the learned Judicial Magistrate No.1, Krishnagiri, thereby take cognizance for the offence under Section 138 of Negotiable Instruments Act.

2. The respondent/complainant lodged a complaint for the offence under Section 138 of Negotiable Instruments Act against the petitioner alleging that the petitioner had issued a cheque to discharge his legally enforceable liability. When the said cheque was presented for encashment, it was returned for the reason 'in-sufficient funds'. Thereafter, the de-facto complainant caused legal notice as contemplated under Section 138 of Negotiable Instruments Act. Though the petitioner sent a reply to the notice, he did not settle the amount as demanded by the de-facto complainant. Hence, he lodged a complaint and the same has been taken cognizance in STC No.753 of 2019 on the file of the Judicial Magistrate No.I, Krishnagiri.

3. The learned Counsel for the petitioner has submitted that

the petitioner is an innocent person and he has not committed any offence as alleged by the defacto complainant. He would further submit that the petitioner's 14 cheques were misplaced and one among the 14 cheques was utilized by the de-facto complainant for registering the false case under Section 138 of Negotiable Instruments Act against the petitioner. Therefore, the defacto complainant caused statutory notice and filed a complaint and the same has been taken cognizance in S.T.C.No.753 of 2019 on the file of the learned Judicial Magistrate No.1, Krishnagiri.

4. Heard Mr.T.Panchatsaram, learned counsel appearing for the petitioner.

5. 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.

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.753 of 2019 on the file of the learned Judicial Magistrate No.1, Krishnagiri.

9. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kv

To

The Judicial Magistrate No.1,
Krishnagiri.

The Chief Judicial Magistrate,
Krishnagiri

CRL.O.P.No. 4734 of 2020

PP (CO)
RN (04/06/2020)

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