

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2020

CORAM

THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No. 4968 of 2020
and
Crl.M.P.No.2845 of 2020

P.Raju

... Petitioner

Vs

State Bank of India,
Rayakottai Branch,
Represented by its Deputy Manager,
R.Kumar.

.... Respondent

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying, to call for records in S.T.C.No.680 of 2019 on the file of the learned Judicial Magistrate No.I, Denkanikottai and quash the same.

For Petitioner : Mr.A.Balamurugan

ORDER

This petition has been filed to quash the proceedings in S.T.C.No.680 of 2019 on the file of the learned Judicial Magistrate No.I, Denkanikottai, thereby take cognizance for the offence under Section 138 of Negotiable Instruments Act.

2. According to the complainant, the petitioner borrowed loan and availed cash credit of Rs.30,00,000/- on 21.03.2010 and he has also executed deposit of title deeds.

3. According to the agreement, once in six months, he has to pay a sum of Rs.5,90,240/- towards settling the loan. The petitioner/accused issued a cheque for a sum of Rs.5,90,240/- which was returned dishonoured for the reason of insufficient funds. Therefore, the defacto complainant caused statutory notice and filed a complaint and the same has been taken cognizance in S.T.C.No.680 of 2019 on the file of the learned Judicial Magistrate No.I, Denkanikottai.

4. The learned Counsel appearing for the petitioner would submit that as per the document produced by the defacto

complainant, the complainant was authorised only to the file a suit and not to file any complaint under Section 139 of NI Act. Therefore, the complainant is not authorised to lodge any complaint as against the petitioner/accused.

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 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.

.....

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 the above judgment, the Hon'ble Supreme Court of India held that as per the authorisation letter given by the complainant, he is authorized to file a suit against the accused. Whereas, he filed a complaint as such the conviction was set aside. In the case on hand, the document which is alleged to have authorised the complainant to file a complaint

has to be tested before the trial. Even before the trial, it cannot be heard by this Court exercising powers under Section 482 of Cr.P.C. Therefore, this Court is not helpful to the case on hand.

9. That apart, a perusal of records shows that the trial has already been commenced and PW.1 was examined and also documents produced by him. However, the points raised by the petitioner can be agitated before the trial Court in the manner known to law. The trial Court is directed to complete the trial within a period of six weeks from the date of receipt of copy of this Order.

10. Accordingly, this criminal original petition is dismissed. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Judicial Magistrate I
Denkanikottai

2.Do Thro The Chief Judicial Magistrate
Krishnagiri.

Cr1.O.P.No. 4968 of 2020

VD(CO)
SP(30/05/2020)

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