

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2020

CORAM

THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.5659 of 2020

and

Crl.M,.P.Nos.3207 & 3208 of 2020

1.Rajamani

2.Subha

3.M.P.Mohansundar

4.M.P.Sakthivel

... Petitioners

Vs

Mrs.Soumya Deepak Krishna

... Respondent

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records pertaining to C.C.No.1327 of 2019 on the file of the learned Judicial Magistrate No.I (Fast Track Level) Coimbatore and to quash the same.

For Petitioner : Mr.C.D.Sugumar

ORDER

This petition has been filed to quash the proceedings in C.C.No.1327 of 2019 on the file of the learned Judicial Magistrate No.1, (Fast Track Level), Coimbatore, thereby taken cognizance for the offence under Section 138 of the Negotiable Instruments Act, as against this petitioner.

2 The learned Counsel appearing for the petitioners would submit that the petitioner is innocent and they have not committed any offence as alleged by the prosecution. Without any base, the respondent has lodged a private complainant before the learned Judicial Magistrate No.I (Fast Track Level), Coimbatore, for the offence under Section 138 of the Negotiable Instruments Act, as against the petitioners and the same has been taken cognizance in C.C.No.1327 of 2019. Hence, they prayed to quash the same.

3 Heard Mr.C.D.Sugumar, learned counsel appearing for the petitioners.

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 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.

7 The learned counsel appearing for the petitioners would submit that there are totally six accused, in which, the petitioners are accused 3 to 6. According to the defacto complainant, the first accused is a partnership firm represented by the managing partner and others partners. But the petitioners/accused 3 to 6 are not partners of the first accused firm and they have been falsely implicated in this complaint. Further, he contended that there is no specific averments as against these petitioners and as such they are not liable to be prosecuted.

8 On a perusal of the complaint, it is seen that the complainant categorically stated that the first accused is a partner firm represented by the managing partner viz., second accused. Other accused 2 to 6 are partners of the first accused partnership firm viz., M/s.PRS Yarn Trading. The complainant has also averred specific overtact as against all the petitioners and as such, filing of this petition seeking quashment is nothing but an abuse of process of law and it cannot be entertained by this Court. Further, the points raised by the petitioners in respect of disputing the partnership firm, it has to be go before the Trial Court and only by letting evidence, the petitioners have to establish their case. The mixed question of facts cannot be considered here under section 482 of Cr.P.C.

9 In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.1327 of 2019, on the file of the Judicial Magistrate No.I, (Fast Track Level). Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are also closed. However, the petitioner is at liberty to produce all the grounds before the Trial Court during the trial.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Judicial Magistrate No.I,
(Fast Track Level),
Coimbatore.

+1cc to Mr.C.D.Sugumar, Advocate Sr.22367

Cr1.O.P.No.5659 of 2020
and
Cr1.M,.P.Nos.3207 & 3208 of 2020

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srg 04/08/2020