

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2020

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THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No. 5647 of 2020

and

Crl.M.P.Nos.3201 & 3202 of 2020

M.P.Mohansundar

... Petitioner/Accused

Vs.

Mrs.Soumya Deepak Krishna

.... Respondents/Complainant

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records pertaining to C.C.No.1477 of 2019, on the file of the learned Judicial Magistrate No. II (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.1477 of 2019 on the file of the Judicial Magistrate No. II (Fast Track Level), Coimbatore thereby taken cognizance for the offences under Section 138 of the Negotiable Instruments Act, as against this petitioner.

2. The learned counsel appearing for the petitioner would submit that the petitioner is not a signatory to the cheque. Even according to the complaint one K.M.Panneerselvam, Kartha of the family, gave cheques from several entitles, which belong to their family. Therefore, the complainant itself is not maintainable as against he petitioner herein.

3 Heard the learned counsel appearing for the petitioner and perused the materials placed on record.

4 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.

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.

.....  
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 On a perusal of the complaint, it is revealed that the petitioner is the sole proprietor of Bapitha Tex, Erode. The complainant and her power agent are husband and wife. The power agent has direct knowledge about the transaction between the complainant and the accused. Though, in the complaint, it is stated that the Kartha of the family viz., K.M.Panneersalvam gave cheques from several entitles, which belong to their families, the petitioner is the signatory to the cheque and he issue cheque for transaction between the petitioner and the defacto complainant. Therefore, the point raised by the petitioner cannot correct. Further, it is mixture question of fact and such cannot be considered here under Section 482 of Cr.P.C. Therefore, this Petition is devoid of merits.

8 In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.42 of 2019 in Crime No.1477 of 2019, on the file of the learned Judicial Magistrate No. II (Fast Track Level), Coimbatore. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are also closed. However, the petitioner is at liberty to raise all the grounds before the trial Court.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

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

+1cc to Mr.C.D.Sugumar, Advocate, S.R.No.22368

Cr1.O.P.No. 5647 of 2020  
and

Cr1.M.P.Nos.3201 & 3202 of 2020

NMI (CO)  
GN(16/07/2020)

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