

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2020

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No. 7099 of 2020

and

Crl.M.P.Nos.3846 & 3847 of 2020

M.Kandan

S/o.Munuchamy

Mari Amman Koil Street,

Panchetty Village,

Ponneri Taluk,

Thiruvallur District.

.... Petitioner/Accused

Vs.

P.Murugesan,

S/o.K.Panchavanam,

No.E/54, PWD Quarters,

Saidapet, Chennai-600 015.

.... Respondent/Complainant

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to call for the records in C.C.No.3683 of 2019 on the file of the learned Metropolitan Magistrate Fast Track Court -II, Egmore, Chennai and quash the same.

For Petitioner : Mr.A.Saranraj

For Respondent : No Appearance

ORDER

This petition has been filed to quash the proceedings in C.C.No.3683 of 2019 on the file of the learned Metropolitan Magistrate Fast Track Court -II, Egmore, Chennai, thereby taken cognizance for the offences under Section 138 of the Negotiable Instrument Act (herein after referred to as 'NI Act') as against this petitioner.

2. The learned counsel for the petitioner would submitted that the petitioner is an accused on the complaint lodged by the respondent for an offence under Section 138 of the NI Act. He further submitted that there is absolutely no prima facie case made out by the respondent to take cognizance for an offence under Section 138 of the NI Act. He would further submitted that while examining PW1, he marked pronote dated 02.06.2018 as Exhibit No.1 in which one Nandakumar was attested as witnesses

in the said document. Therefore it is very clear that the said Nandakumar colluded with the complainant and he handed over the promissory note which was illegally collected from the petitioner and filed the case for an offences under Section 138 of the NI Act. He further submitted that in the reply notice dated 24.09.2018, the petitioner categorically denied all the allegations made as against the petitioner herein. Therefore he sought for quash of entire proceedings initiated by the respondent for punishable under section 138 of the NI Act.

3. Heard Mr.A.Saranraj learned counsel appearing for the petitioner and there is no representation for the respondent.

4. It is seen that the respondent lodged complaint for an offence under Section 138 of the NI Act as against the petitioner. Already trial commenced and PW-1 Gurusamy, the respondent was examined as PW1. The ground raised by the petitioner is that while marking the Exhibit No.1 pronote issued by the petitioner herein is attested by one Nandakumar. Therefore, the said Nandakumar only handed over the pronotes and the alleged cheque to the respondent/ defacto complainant and the petitioner is no way connected to the respondent herein, once the trial commenced in the proceedings check the respondent quash proceedings may not be entertained. The ground raised by the petitioner's said question of facts and it has to be tested before the trial Court with an evidence.

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 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."

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 view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.3683 of 2019 on the file of the Metropolitan Magistrate Fast Track-II, Egmore, Chennai. The petitioner is at liberty to raise all the grounds before the trial Court. Thereafter, the trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of the order.

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

-s/d-

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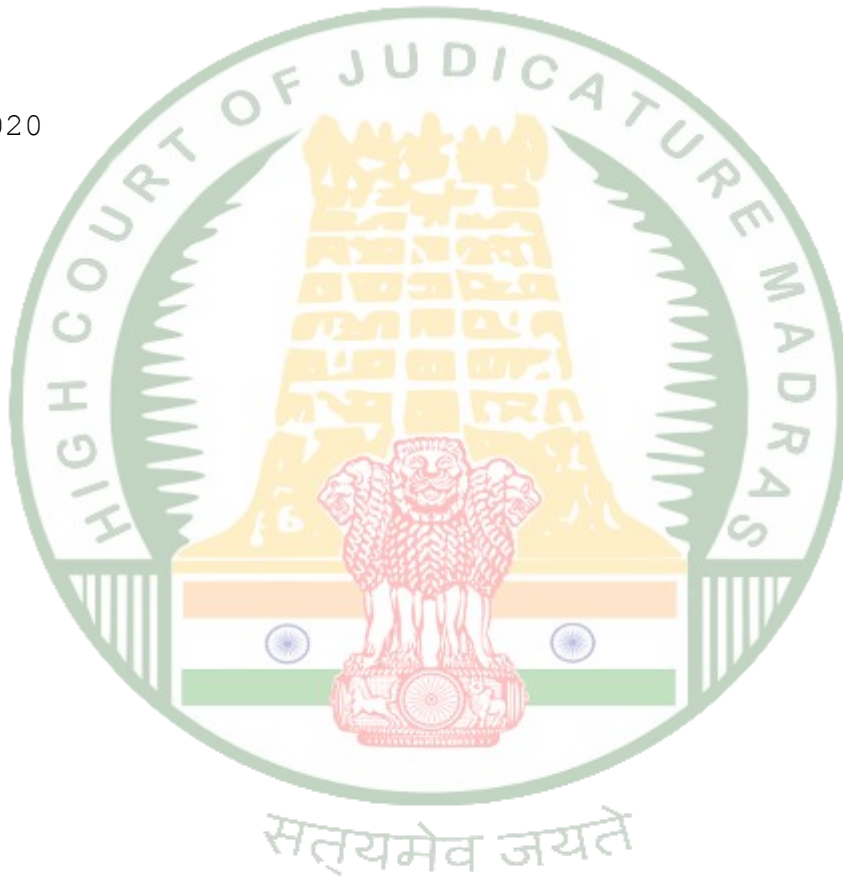
1.The Metropolitan Magistrate Fast Track Court-No.II,
Egmore, Chennai.

2. The Public Prosecutor,
High Court, Madras.

3.The Chief Metropolitan Magistrate
Egmore Chennai

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