

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.08.2020
CORAM

THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.6779 of 2020
and Crl.M.P.Nos.3717 and 3718 of 2020

1. M/s.Madhusudan Metals,
Represented by its Partner,
Mr.Ranmal Jugraj Virwadia,
Having its Office at
Office No.8, 4th Floor,
Alankar Building,
2nd Khetwadi Lane,
S.V.P.Road, Mumbai-400 004.

2. Ranmal Jugraj Virwadia
Partner & Signatory of Cheque,
Having Address at:
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Office No.8, 4th Floor,
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2nd Khetwadi Lane,
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Also at:
Flat No.1602, 16th Floor,
Dr.Nanasaheb Deshmukh Bldg CHS Ltd.,
Dr.Deshmukh Lane,
V.P.Road, Girgaum
Mumbai-400 004.

Also at:
Flat No.1502, 15th Floor,
Dr.Nanasaheb Deshmukh Bldg CHS Ltd.,
Dr.Deshmukh Lane,
V.P.Road, Girgaum
Mumbai-400 004.

3. Rajesh Surajmal Shah
Partner,
Having Address at
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Alankar Building,
2nd Khetwadi Lane,
S.V.P.Road, Mumbai-400 004.

4. Bhagwati Virwadia
Partner,
Having Address at
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2nd Khetwadi Lane,
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Dr.Nanasaheb Deshmukh Bldg CHS Ltd.,
Dr.Deshmukh Lane,
V.P.Road, Girgaum
Mumbai-400 004.

...Petitioners

Vs

M/s.Kotak Mahindra Bank Limited
Having its Office at
II Floor, No.39, Ceebros Center,
Montieth Road,
Egmore, Chennai - 600 008.
Represented by its
Associate Vice President,
Mr.V.Ragothaman

...Respondent

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to A) Dispense with the personal appearance of the petitioners in C.C.No.391 of 2018 on the file of Fast Track-IV Metropolitan Magistrate, George Town, Chennai, pending trial in C.C.No.391 of 2018 and thus render justice.

B) Grant stay of all further proceedings of the charge sheet in C.C.No.391 of 2018 on the file of Fast Track-IV Metropolitan Magistrate, George Town, Chennai, pending disposal of the above quash petition and thus render justice.

C) Call for the entire records concerned in C.C.No.391 of 2018 on the file of Fast Track-IV Metropolitan Magistrate, George Town, Chennai, and quash the same in so far relates to the petitioner is concerned.

For Petitioners : Mr.C.Prakasam

ORDER

This petition has been filed to quash the proceedings in C.C.No.391 of 2018 on the file of Fast Track-IV Metropolitan Magistrate, George Town, Chennai, thereby taken cognizance for the offences under Section 138 of Negotiable Instrument Act, as against the petitioners.

2. The learned Counsel appearing for the petitioners would submit that the petitioners are innocent and they have not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in for the offences under Section 138 of Negotiable Instruments Act, as against the petitioners and the same has been taken cognizance in C.C.No.391 of 2018 on the file of Fast Track-IV Metropolitan Magistrate, George Town, Chennai. Hence they prayed to quash the same.

3. Heard Mr.C.Prakasam, 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 petitioners cannot be considered by this Court under Section 482 Cr.P.C.

7. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.391 of 2018 on the file of Fast Track-IV Metropolitan Magistrate, George Town, Chennai. The petitioners are at liberty to raise all the grounds before the trial Court. Considering the age of the petitioners, the personal appearance of the petitioners are dispensed with and they shall be represented by a counsel after filing appropriate application. However, the petitioners shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment. The trial Court is directed to complete the trial within a period of nine months from the date of receipt of copy of this Order.

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

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

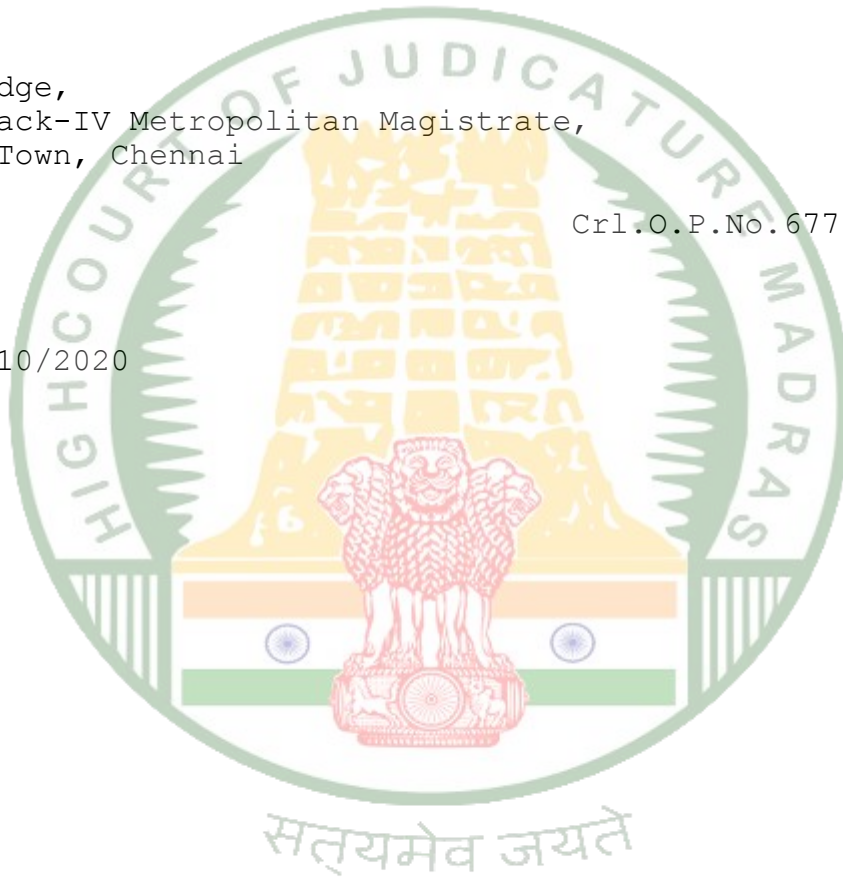
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To

The Judge,
Fast Track-IV Metropolitan Magistrate,
George Town, Chennai

CrI.O.P.No.6779 of 2020

SSV(CO)
KKV/09/10/2020



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