

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2020

CORAM:

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

Crl.O.P.No. 23959 of 2019

and

Crl.M.P.Nos.12695 & 12696 of 2019

R.Perumal
S/o.Ramadas

.... Petitioner/Accused

Vs.

K.G.Narayanasami
S/o.Ganapathi Mudaliar

.... Respondent/Complainant

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to call for the records in C.C.No.15 of 2019 on the file of the learned Judicial Magistrate, Arani and quash the same.

For Petitioner : Mr.G.Muniratnam

For Respondent : Mr.P.Sathish Kumar

ORDER

This petition has been filed to quash the proceedings in C.C.No.15 of 2019 on the file of the learned Judicial Magistrate, Arni, thereby taken cognizance for the offences under Section 138 of Negotiable Instrument Act, in Crime No.15 of 2019, as against this petitioner.

2. The learned Counsel appearing for the petitioner would submit that the petitioner is innocent and he has not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.15 of 2018 for the offences under Sections 138 of Negotiable Instrument Act, as against the petitioner and the same has been taken cognizance in C.C.No. 15 of 2019 on the file of the learned Judicial Magistrate, Arni. Hence he prayed to quash the same.

3. The learned Counsel appearing for the respondent would submit that after receipt of summons in the proceedings initiated by the respondent for the offence under Section 138 of Negotiable Instrument Act, the petitioner never appeared before the trial Court and as such the trial Court issued NBW against the petitioner and it is pending against

the petitioner and the petitioner is not entitle for any of the relief.

4. Heard Mr.G.Muniratnam learned counsel appearing for the petitioner and Mr.P.Sathish Kumar, learned counsel appearing for the respondent.

5. 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.

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. It is seen that after receipt of summons in the proceedings initiated by the respondent for the offence under Section 138 of Negotiable Instrument Act, the petitioner never appeared before the trial Court and as such the trial Court

issued NBW and it is pending against the petitioner and the petitioner is not entitle for any of the relief.

9. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.15 of 2019 on the file of the learned Judicial Magistrate, Arani. The petitioner is at liberty to raise all the grounds before the trial Court.

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

Sd/-
Assistant Registrar (CO MDU)

//True copy//

Sub Assistant Registrar

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To

1. The learned Judicial Magistrate,
Arani.
2. The Public Prosecutor,
High Court, Madras.

CrI.O.P.No. 23959 of 2019
and
CrI.M.P.Nos.12695 & 12696 of 2019

MG (CO)
GMY (10/09/2020)

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