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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2021

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CrI.O.P. No.12574 of 2016
and
CrI. M.P. No.6505 of 2016

K.P. Habeeb Rahman

...Petitioner

Vs.

R. Padam Chand Bagmar

...Respondent

PRAYER: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to complaint in C.C. No.2120 of 2011 on the file of the learned Fast Track Judge, IV, George Town, Chennai and quash the same.

For Petitioner : Mr. M. Fazulul Haq

For Respondent : No Appearance

O R D E R

This Criminal Original petition has been filed under Section 482 Cr.P.C. seeking for to call for the records pertaining to complaint in C.C. No.2120 of 2011 on the file of the learned Fast Track Judge, IV, George Town, Chennai and quash the same.

2. The case of the petitioner is that the complainant had filed complaint under Section 138 of Negotiable Instrument Act for the dishonour of a cheque bearing No.179000 dated 11.04.2011 for a sum of Rs.2,75,000/- purportedly issued by the petitioner for an amount of Rs.2,00,000/-as loan amount paid by the respondent herein on 03.05.2009. The complainant /respondent herein averred in his complaint that he had presented the said cheque for collection through his Banker ie, Indian Bank, Kothawal Bazar Branch, Chennai - 600 001, and the same was returned unpaid on 20.04. 2011 with an endorsement "Insufficient

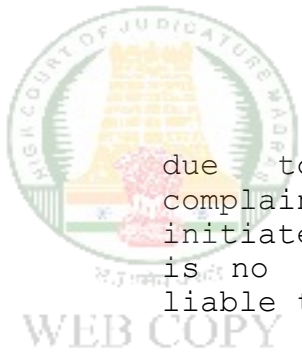


Funds". Therefore, the respondent had issued a legal notice dated 05.05.2011 to the petitioner/accused calling upon to pay the entire amount covered under the cheque within 15 days from the receipt of the notice. The petitioner has not received the said notice on 16.05.2011, but he did not make any payment covered under the Cheque. Therefore, the petitioner has committed an offence punishable under Section 138 Negotiable Instrument Act.

3. The learned counsel for the petitioner would submit that this Court by order dated 29.04.2021 directed the Trial Court to proceed further with the Trial and complete the same within a period of three months and posted the case on 16.06.2021. However, the copy of this aforesaid order has not been till 16.06.2021, this Court modified the aforesaid order by extending time limit for completion of Trial till 31.12.2021 and directed the complainant to appear before the Trial Court for next hearing, failing which the Trial Court can issue appropriate orders as per law and the posted the case for next hearing in the first week of August 2021. While being so, the complainant/respondent had failed to enter into appearance before the Trial Court on the hearing date fixed by the Trial Court and he could not proceed with this matter.

4. It has been further submitted that the complaint is vague and the respondent had failed to elaborate about the transaction allegedly took place between the petitioner and the respondent. He had not stated clearly whether the statutory notice was served on the petitioner or returned without service. The case was numbered in the year 2011 and the summons was served on the petitioner only during January 2016. The petitioner had not received any notice contemplated under Section 138(b) of the N.I. Act from the respondent/complainant and as there is no cause of action arose for filing complaint as contemplated under Section 138(c) of the N.I. Act. The mere reading of the complaint would show that the complaint had not disclosed how the notice was served or returned. The complaint should disclose the particulars of date of cheque, date of presentation of cheque, date of notice and its service etc. If the notice has been returned, the reason for return should also be incorporated along with the complaint. In the complaint filed by the complainant/respondent herein, the aforesaid key aspects are missing and as such continuance of proceedings before the Trial Court is nothing but abuse of process of Court.

5. The learned counsel for the petitioner would further submit that the cheque in question was given as security cheque during the year 2009 and after closure of the loan transaction, neither the said cheque was returned by the complainant/respondent nor collected by the petitioner herein.



due to his busy day to day schedule. Hence, the complainant/respondent herein misused the blank cheque and initiated the criminal proceedings belatedly and hence the same is not sustainable in the eyes of Law and hence the same is liable to be quashed.

6. It has been further submitted that the version of the complainant in the complaint and sworn statement are contrary. While the petitioner borrowed a sum of Rs.2,00,000/- as hand loan as stated in the complaint, in the Sworn statement it has been stated that the petitioner/accused availed the amount of Rs.2,00,000/- for purchasing the vehicle under Hire Purchase. Further, the learned counsel is relying on the Judgment of the Apex Court reported in CDJ 2014 802, submitted that the respondent alleged in the complaint that the accused has not received the notice on 16.05.2011. Hence, taking into consideration that the notice was served only on 16.05.2011, the 15 days period contemplated under the N.I. Act expires on 31.05.2011. However, the complaint has to be filed only on 01.06.2011 or thereafter. But in this case, complaint was filed before the expiry of 15 days i.e. 31.05.2011 and hence there is no commission of offence nor accrual of cause of action for filing of complaint under Section 138 of the N.I. Act and the complaint is premature. Hence, the cognizance taken on the premature complaint with non application of mind by the learned Magistrate is bad in law and accordingly, liable to be quashed. Hence, the petitioner has filed the present Criminal Original Petition under Section 482 of the Cr.P.C. to quash criminal proceedings in C.C. No.2120 of 2011 pending before the learned Fast Track Judge-IV, George Town, Chennai.

7. Heard, the learned counsel for the petitioner and perused the material available on record.

8. 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



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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.

9. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in Crl.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."

10. Further the Hon'ble Supreme Court of India also held in the order dated 02.12.2019 in Crl.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



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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.

11. Even though there is contra averments between the complaint and sworn statement as to nature of the loan whether the loan was borrowed under Hire Purchase or hand loan, it is admitted fact that the petitioner has borrowed the amount of Rs.2,00,000/- from the respondent and the cheque issued by the petitioner herein has been returned without insufficient fund.

12. The contentions put forward by the learned counsel appearing on behalf of the petitioners are purely factual in nature and this Court cannot venture into conducting a mini investigation into the matter and it therefore does not fall within the ambit of its jurisdiction under Section 482 of Cr.P.C. Any finding on facts will also have a bearing on the Trial conducted by the Trial Court.

13. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.2120 of 2011 on the file of the learned Fast Track Judge, George Town, Chennai. However, the petitioner is at liberty to raise all the grounds before the Trial Court. The trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this Order.



14. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is also closed if any.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Lbm

To:

The Ivth Judge,
Fast Track Court,
George Town
Chennai.

Crl.O.P. No.12574 of 2016
and
Crl. M.P. No.6505 of 2016

VSN-II (CO)
RGA (06/10/2021)