

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2022

CORAM :

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.NOS.16125,16127 AND 16129 OF 2020
AND

CRL.MP.NOS.6178, 6179, 6180, 6181, 6182 AND 6183 OF 2020

1.N.Nandhagopal

2.S.Padmavathy

3.K.Komathi

4.P.Sarala

5.S.Padmavathy

6.K.Viswanathan ...Petitioners (in all 3 Crl.OPs)

Vs.

K.Chezhiyan ...Respondent (in Crl.OPs.16125
and 16127 of 2020)

S.Sasikala ...Respondent(in Crl.OP.16129 of 2020)

COMMON PRAYER : Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure, to call for the records of STC.Nos. 356/19, 330/19 and 308 of 2019 on the file of the Judicial Magistrate Court No.1, Namakkal respectively and quash the same.

For Petitioners : Mr.K.Shakespeare
(in all 3 Crl.OPs)

For Respondent : No Appearance (Notice Served)
(in all 3 Crl.OPs)

COMMON ORDER

These Criminal Original Petitions have been filed, invoking Section 482 of Cr.P.C seeking orders to call for the records pertaining to STC.Nos. 356, 330 and 308 of 2019 respectively on the file of the Judicial Magistrate Court -I, Namakkal and quash the same.

2. These petitioners have been arrayed as A5, A2, A7, A10, A9 and A11 in STC.Nos. 356, 330 and 308 of 2019 respectively on the file of the Judicial Magistrate Court No.1, Namakkal for the

offences punishable under Section 138 r/w 142 of Negotiable Instruments Act based on the complaint given by the respondents.

3. The case of the respondent is that the respondent is doing bore well drilling business. All the petitioners/accused persons 2 to 1 are the trustees of the first accused. They are running Polytechnic College viz., Venkatramana Polytechnic College at Vellianai, Karur. Some of the accused have acquainted with the respondent and as such, they have approached him to invest Rs.10,00,000/- and they will return the amount in double within a period of five years. On believing the said words, the respondent has invested a sum of Rs.10,00,000/- on 27.08.2021 in the first accused's trust. However, after the completion of a period of five years, the accused persons failed to return the amount as assured by them. After repeated requests made by the respondent, the accused persons have issued a cheque for a sum of Rs.10,00,000/- on 30.01.2019 and they have also assured that it will be honoured. On the strength of the assurance given by the accused persons, the respondent has presented the cheque for collection, but, it was returned as dishonoured for the reasons "Insufficient funds" . After causing statutory notice, the respondent lodged a complaint against these petitioners for the offences punishable under Section 138 r/w 142 of N.I.Act

4. Heard the learned counsel for the petitioner and the learned Government Advocate (CrI.Side) for the first respondent police.

5. The learned counsel for the petitioner submitted that the claim of the respondent itself is barred by limitations since according to the respondent he has paid a sum of Rs.10,00,000/- on 27.08.2012, whereas the cheque was issued only on 30.01.2019. Therefore, it was not issued for legally enforceable debt.

6. On perusal of the complaint reveals that on 27.08.2012, the respondent has paid a sum of Rs.10,00,000/- to the accused persons. The accused assured that it will be returned in double the amount within a period of five years. Even after completion of five years, the accused persons failed to return the said amount and as such after repeated requests made the respondent, the accused persons have issued cheque on 31.01.2019 and the complaint has been lodged for the offences under Section 138 r/w 142 of N.I.Act. Suit has not been filed for recovery of money. Therefore, it cannot be stated that the claim itself barred by limitation. In respect of the grounds raised that the cheque was not issued for any legally enforceable debt, can be canvassed before the trial Court during trial. Therefore, this Court finds no grounds to quash the proceedings in STC.Nos.356, 330 and 308 of 2019 respectively on the file of the Judicial Magistrate Court-I, Namakkal and these petitions are liable to be dismissed.

7. In this regard, 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., wherein it has been held 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.

8. Recently, the Hon'ble Supreme Court of India, while dealing with 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, 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."

9. 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 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 these cases and as such, the points raised by the petitioners cannot be considered by this Court under Section 482 Cr.P.C.

10. In view of the above discussion, this Court is not inclined to quash the proceedings in STC.Nos.356, 330 and 308 of 2019 respectively on the file of the Judicial Magistrate Court-I, Namakkal. The petitioners are at liberty to raise all the grounds before the trial Court.. Since the cases are of the year 2019, 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.

Accordingly, these Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

Vv

To

- 1.The the Judicial Magistrate Court-I,
Namakkal.
- 2.(do through) The Chief Judicial Magistrate,
Namakkal.
- 3.The Public Prosecutor,
High Court, Madras.

+3ccs to Mr.K.Shakespeare, Advocate Sr.Nos.36854 to 36856

Crl.O.P.No.16125,16127 and 16129 of 2020
and
Crl.MP.Nos.Crl.MP.Nos.6178, 6179, 6180,
6181, 6182 and 6183 of 2020

KK(CO)
RVM(25/07/2022)