



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 24.02.2022
CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

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Crl.O.P(MD)No.3735 of 2022
and
Crl.M.P(MD)Nos.2729 & 2731 of 2022

1. Dr.A.G.Eye Hospital Private Limited,
represented by Managing Director,
Dr.Kummararaj.G

2. Dr.Kummararaj ... Petitioners/Accused No.1 &2

Vs.

D.Balan ... Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to the case in S.T.C No.5338 of 2019 pending of the file of Judicial Magistrate No.IV, Tiruchirappalli and quash the same as illegal as for as against the petitioners by allowing this Criminal Original Petition.

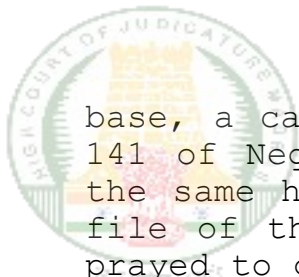
For Petitioner : Mr.B.Janath Ahmed @ B.Janarth Kumar
For Respondents : Mr.R.M.Anbunithi
R1 Additional Public Prosecutor

ORDER

This petition has been filed to quash the proceedings in S.T.C.No.5338 of 2019 on the file of the learned Judicial Magistrate No.IV, Trichy, thereby taken cognizance for the offences under Sections 138 & 141 of Negotiable Instruments Act, as against the petitioners.

2.The case of the respondent/complainant is that the brother of the third accused borrowed a sum of Rupees Two Lakhs from the respondent in the year 2018, but subsequently the third accused failed to repay the same. On 12.2.2018, the complainant presented the cheque, which was given by the accused for collection through his banker, same was dishonoured on 13.02.2018, as "Funds insufficient". Hence, private complaint lodged by the respondent/complainant against the petitioners.

3.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, a case was registered for the offences under Sections 138 & 141 of Negotiable Instruments Act, as against the petitioners and the same has been taken cognizance in S.T.C.No.5338 of 2019 on the file of the learned Judicial Magistrate No.IV, Trichy. Hence they prayed to quash the same.

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4.The learned Additional Public Prosecutor would submit that the trial has been commenced and some of the witnesses have been examined in this case.

5.Heard both sides and perused the materials available on record.

6.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.

7.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."

8. 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:

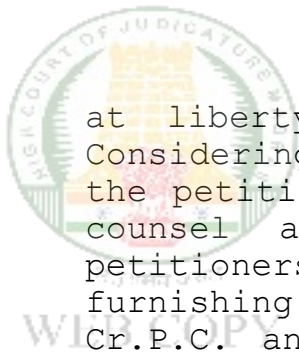
"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as 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 this case and as such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C.

9. In view of the above discussion, this Court is not inclined to quash the proceedings in S.T.C.No.5338 of 2019 on the file of the learned Judicial Magistrate No.IV, Trichy. 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 is dispensed with and he 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 six months from the date of receipt of a copy of this Order.

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

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PNM

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Judicial Magistrate No.IV,
Trichy.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.B.JANATH AHMED @ JANARTH KUMAR, Advocate (SR-8569[F]
dated 25/02/2022)

ORDER IN

Crl.O.P(MD)No.3735 of 2022

and

Crl.M.P(MD)Nos.2729 & 2731 of 2022

24.02.2022

SS/07.03.2022 : 4P/4C