



Crl.O.P(MD)No.2009 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 22.03.2024

CORAM :

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

**Crl.O.P(MD)No.2009 of 2020
and
Crl.M.P(MD)Nos.1013 and 1015 of 2020**

R.Vijay Anand

... Petitioner/Respondent

Vs.

A.Ramaraja

...Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to C.C.No.369 of 2019 learned Judicial Magistrate, Rajapalayam and quash the same.

For Petitioner : Mr.J.Lawrance

For Respondent : Mrs.Lakshmi Gopinath
for M/s.Pollax Legal Solution



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ORDER

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The petitioner has filed the instant criminal original petition to quash the C.C.No.309 of 2019 on the file of the learned Judicial Magistrate, Rajapalayam.

2.Heard learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

3.According to the learned counsel for the petitioner, the respondent has borrowed a sum of Rs.20 lakhs, and to repay the same, the respondent has issued a post dated cheque drawn on Punjab National Bank. When the said cheque was presented for collection, the same was returned with an endorsement as insufficient fund. In furtherance thereto, notice has been issued to the respondent, and a complaint was filed under Sections 138, 142 of Negotiable Instruments Act r/w 357(1)(b) of Cr.P.C. The same was taken cognizance by the learned Judicial Magistrate, Rajapalayam in C.C.No.437 of 2017.



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4.It is the further contention of the learned counsel for the petitioner that to wreck vengeance, the respondent herein has filed a police complaint stating that the cheque, which is the subject matter of C.C.No.437 of 2017 was stealthily removed by the petitioner and that, by such false allegation, the respondent has given a police complaint. However, the police has closed the said complaint 'as mistake of fact'. Thereafter, the respondent has come up with the private complaint under Section 200 Cr.P.C., which was taken cognizance by the learned Judicial Magistrate, Rajapalayam in C.C.No.369 of 2019. Hence, he prays to quash the same.

5.Per contra, the learned counsel appearing for the respondent would contend that there is a prima facie material available in the complaint filed under Section 200 of Cr.P.C and that, after application of mind, the learned Magistrate took cognizance that there are materials allegation made in the complaint, which would prima facie demonstrate the ingredients for the said offence. Therefore, contended that by exercising inherent jurisdiction under Section 482 Cr.P.C., this Court cannot go into factual aspects.



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6.I have given my anxious consideration on the submissions made by

either side.

7.On perusal of the complaint, this Court could able to find the averments in respect of the money dealing between the petitioner and the respondent. On further reading of the averments of the complaint, there is a prima facie material available for the offence stated in the complaint. It is settled principles of law that while the averment made in the complaint is taken un rebutted, and if no offence is made out, then only this Court can interfere under Section 482 of Cr.P.C.

8.At this juncture, this Court deems it appropriate to discuss the precedents in respect of Section 482 Cr.P.C. It is relevant to rely upon the judgment of the Hon'ble Supreme Court in ***Devendra Prasad Singh Vs. State of Bihar & Anr., reported in (2019) 4 SCC 351*** 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



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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. 3/8 <http://www.judis.nic.in> Crl.OP.No.23546 of 2017 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. It is also useful to rely upon the judgment of the Hon'ble Supreme Court in the case of **Central Bureau of Investigation Vs. Arvind Khanna**, reported in **(2019)10 SCC 686**, 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



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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, it is pertinent to mention the judgment of the Hon'ble Supreme Court in the case of ***M.Jayanthi Vs. K.R.Meenakshi & anr***, reported in (2019)SCC Online SC 2058, the relevant portion is extracted hereunder:

"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



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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....."

11.As discussed supra, there are prima facie averments made in the complaint. Therefore, in view of the above settled legal proposition, this Court cannot go into the veracity of those statement. If this Court give any finding in respect of the veracity of the said statement then same would adversely affect the trial. Further, the minute details of the case also can not be gone into under Section 482 Cr.P.C. Any interference at this stage, would only amount to reject the respondent's case at the very threshold, which exercise could not be done under inherent jurisdiction. Therefore, this Court could not find any merit in this petition.



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WEB COPY 12.In the result, this Criminal Original Petition is dismissed.

Consequently, connected miscellaneous petitions are closed.

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NCC:Yes/No

Index:Yes/No

Internet:Yes/No

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To

1.The Judicial Magistrate,
Rajapalayam.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN,J.
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