



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE **G.K. ILANTHIRAIYAN**

WEB COPY

Cr1.O.P.(MD) No.133 of 2019

and

Cr1.MP(MD)No.40 of 2019

Easu Perianayagam

... Petitioner/Respondent

Vs.

1.Selva Udhaya

2.Minor E.Micheal Jonick

... Respondents/Petitioners

(Minor second respondent represented through his next friend and guardian, his mother first respondent, Selva Udhaya)

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in M.C.No.49 of 2018 on the file of the learned Chief Judicial Magistrate, Tuticorin and quash the complaint in M.C.No.49 of 2018 on the file of the learned Chief Judicial Magistrate, Tuticorin.

For Petitioners : Mr.KA.Ramakrishnan

For Respondents : Mr.S.M.Mohan Gandhi

ORDER

This petition has been filed to quash the proceedings in M.C.No.49 of 2018 on the file of the learned Chief Judicial Magistrate, Tuticorin.

2. The learned Counsel appearing for the petitioner would submit that the petitioner is an innocent person and he has not committed any offence as alleged by the prosecution. Hence he prayed to quash the same.

3. Heard the learned counsel appearing for the petitioner and learned counsel appearing for the respondents.

4.It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Cr1.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."

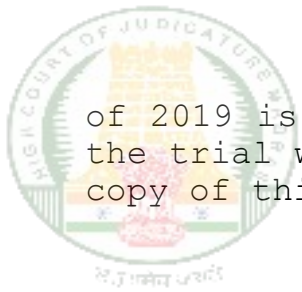
5. Recently, the Hon'ble Supreme Court of India held in respect of the very same issue in **Crl.A.No.1572 of 2019 - Central Bureau of Investigation Vs. Arvind Khanna**, wherein, it has been held as follows:

"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."

- The above judgment is squarely application to this case and as such, the points raised by the petitioners cannot be considered by this Court under Section 482 Cr.P.C.

6. In view of the above discussion, this Court is not inclined to quash the proceedings in M.C.No.49 of 2018 on the file of the learned Chief Judicial Magistrate, Tuticorin. Hence this Criminal Original Petition stands dismissed. Consequently, Crl.M.P(MD) No.40



of 2019 is closed. However, 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.

Sd/-

Assistant Registrar(AS)

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// True Copy //

Sub Assistant Registrar(CS)

dss

To

The Chief Judicial Magistrate,
Tuticorin.

+1CC TO MR.S.M.MOHAN GANDHI, Advocate Sr. No.99323
+1CC TO MR.KA.RAAMAKRISHNAN, Advocate Sr. No. 99318

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and
Crl.MP (MD) No.40 of 2019
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SVN(CO)
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