



BEFORE THE MADURAI BENCH OF MADURAI HIGH COURT
DATED:05.11.2019
CORAM:

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

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Crl.O.P.(MD) No.2813 of 2019

and

Crl.M.P(MD) Nos.1560 and 1561 of 2019

P.Somasundaram

... Petitioner

Vs.

1. Thenmozhi

2. Minor. S.Sivani

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to Call for the records in connection with the impugned complaint in DVOP No.2 of 2018 pending on the file of the learned Judicial Magistrate No.II, Dindigul and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.S.Saravaganprabu

For Respondents : Mr.G.Bhagavath Singh

O R D E R

This petition has been filed to quash the proceedings in DVOP No.2 of 2018 on the file of the learned Judicial Magistrate No.II, Dindigul , as against this petitioner.

2. The learned Counsel appearing for the petitioner would submit that the petitioner is innocents and he has not committed any offence. Further he would submit that the complaint was filed after four years. Hence he prayed to quash the same.

3. Heard Mr.Saravagan Prabu learned counsel appearing for the petitioner and Mr. G.Bhagavath Singh, learned counsel appearing for the respondents.

4. It is also 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



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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 petitioner cannot be considered by this Court under Section 482 Cr.P.C.

6. It is seen that there are specific allegations against the petitioner, which has to be investigated. Hence, this Court is not inclined to quash the proceedings in DVOP No.2 of 2018 on the file of the learned Judicial Magistrate No.II, Dindigul. Hence this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition in Crl.M.P(MD) NO.1560 of 2019 is closed and Crl.M.P(MD) No.1561 of 2019 stands ordered. Further the trial court is directed to accept the relief of maintenance as against the petitioner since the petitioner is facing very same set



of allegations before the trial court in C.C.No.466 of 2016 on the file of the learned Judicial Magistrate No.II Dindigul and complete the trial within a period of six months from the date of receipt of copy of this Order.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

The Judicial Magistrate No.II, Dindigul.

+1CC TO MR.G.BHAGAVATH SINGH, Advocate Sr. No.96112

+1CC TO MR.S.SARVAGAN PRABHU, Advocate Sr. No. 96209

Cr1.O.P. (MD) No.2813 of 2019

and

Cr1.M.P(MD) Nos.1560 and 1561 of 2019

05.11.2019

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