



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2019

CORAM:

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

Crl.O.P. (MD)No.6657 of 2019

and

Crl.M.P. (MD)No.4477 and 4478 of 2019

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1.Saibudheen @ M.Mohammed Saibudheen

2.Jalaludheen

3.Jamaludheen

4.Samsudheen

... Petitioners/Accused No.1 to 4

-Vs-

1.The Inspector of Police,
Thiruvattar Police Station,
Kanyakumari District.
(Crime No.127 of 2017)

...1st Respondent/Complainant

2.Seyedhu Ali

...2nd Respondent/Defacto Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records relating to the proceedings in C.C.No.1386 of 2018, pending on the file of the Judicial Magistrate No.II, Padmanabapuram and may quash the same in respect of the petitioners.

For Petitioner : Mr.K.P.Narayanakumar
For R1 : Mr.K.Suyambulinga Bharathi
Government Advocate(Crl.side)

For R2 : Mr.M.Saravanan

O R D E R

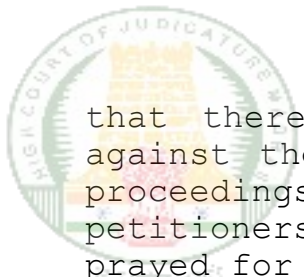
This Criminal Original Petition has been filed to quash the proceedings in C.C.No.1386 of 2018, pending on the file of the Judicial Magistrate No.II, Padmanabapuram.

2.The case of the prosecution is that the defacto complaint's brother was elected as Secretary of Jameer Ajilil Kuran Valgatheesh Palivasal. There was some previous enmity, between the accused persons and the Mosque administration. Due to which, the petitioners abused the defacto complaint and assaulted him and caused injuries. Hence the complaint.

3.The learned counsel appearing for the petitioners would submit that the petitioners are innocent persons and they have not committed any offence as alleged by the prosecution. He would further submit that the fourth petitioner died.

4.The learned Government Advocate (criminal side) submitted

<https://hcservices.ecourts.gov.in/hcservices/>



that there are materials available to proceed with the case as against the petitioners herein and at the threshold, the criminal proceedings cannot be quashed and the charges framed against the petitioners have to be gone into a full-fledged trial. Hence, he prayed for dismissal of the petition.

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

6. A careful perusal of entire materials available on record, the final report discloses a *prima facie* offence against the petitioner and there is no reason to interfere with the same. 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 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 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 judgments are squarely applicable to this case and as such, the points raised by the petitioners cannot be considered by this Court under Section 482 Cr.P.C.

8. In view of the above discussions, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are also dismissed. Since the fourth petitioner died, the entire charges abated as against him. The learned Judicial Magistrate No.II, Padmanabapuram, is directed to complete the proceedings, within a period of nine months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (w)

// True Copy //

Sub Assistant Registrar (CS)

das

To

1. The Judicial Magistrate No.II,
Padmanabapuram.

2. The Inspector of Police,
Thiruvattar Police Station,
Kanyakumari District..

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

+1 CC to M/s.M.SARAVANAN, Advocate (SR-97091[F] dated 08/11/2019)
+1 CC to M/s.K.P.NARAYANA KUMAR, Advocate (SR-97311[F] dated
11/11/2019)

Crl.O.P. (MD)No.6657 of 2019

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