



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 15.11.2019
CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD) Nos. 9036 of 2017 & 15757 of 2019
and
Crl.MP(MD Nos.6126, 6127, 9331 & 9332 of 2019

Kumaresan ... Petitioners/Accused No.5
(In Crl.O.P.(MD) No. 9036 of 2017)

Venkateswaran ... Petitioners/Accused No.2/Accused No.2
(In Crl.O.P.(MD) No. 15757 of 2019)

Vs.

1.The StateRep by its
The Inspector of Police,
District Crime Branch, Theni,
Theni District.
(Crime No.19/2013) ... 1st Respondent/Complainant
(In both Petitions)

2.R.Rengarajan
Block Development Officer,
Aundipatti,
Theni District. ... 2nd Respondent/Defacto
complainant
(In both Petitions)

COMMON PRAYER: Criminal Original Petitions filed under Section 482 Cr.P.C. to call for the records in C.C.No.98 of 2017 on the file of the learned Judicial Magistrate, Theni and to quash the same.

For Petitioner : Mr.S.C.Herold Singh
(In Crl.O.P.(MD) No. 9036 of 2017)

For petitioner : Mr.H.Velavadas
(In Crl.O.P.(MD) No. 15757 of 2019)

For R1 : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl.Side)
(In both Petitions)

For R2 : Mr.M.Ponniah
(In both Petitions)

COMMON ORDER

These petitions have been filed to quash the proceedings in C.C.No.98 of 2017 on the file of the learned Judicial Magistrate, Theni.



2. 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. Without any base, the first respondent police registered a case in Crime No.19 of 2013 for the offences under Sections 424, 468, 471, 420 r/w 34 IPC, as against the petitioners and taken cognizance for in C.C.No.98 of 2017. Hence he prayed to quash the same.

3. The learned Government Advocate (Crl.Side) would submit that some of the witnesses have been examined in this case.

4. Heard Mr.S.C.Herold Singh, learned counsel appearing for the petitioner in Crl.O.P.(MD) No. 9036 of 2017, Mr.H.Velavadas, learned counsel appearing for the petitioner in (In Crl.O.P.(MD) No. 15757 of 2019), Mr.K.Suyambulinga Bharathi, learned Government Advocate (Crl.Side) appearing for the first respondent in both petitions and Mr.M.Ponniah, learned counsel appearing for the second respondent in both petitions.

5.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.

6. 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 these cases and as such, the points raised by the petitioners cannot be considered by this Court under Section 482 Cr.P.C.

7. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.98 of 2017 on the file of the learned Judicial Magistrate, Theni. Hence these Criminal Original Petitions stand dismissed. Consequently, Crl.M.P(MD) No.6127 of 2017 and Crl.M.P(MD) No.9332 of 2019 stand allowed and Crl.M.P(MD) No.6126 of 2017 and Crl.M.P(MD) No.9331 of 2019 are 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.

8. Further, the personal appearance of the petitioners is dispensed with and they shall be represented by a counsel after filing appropriate application. 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.

Sd/-

Assistant Registrar (writs)

// True Copy //

Sub Assistant Registrar(CS)



1.The Judicial Magistrate,
Theni.

2. The Inspector of Police,
District Crime Branch, Theni,
Theni District.

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

+1.CC. To Mr.M.Ponniah, Advocate in SR No.98634

+1.CC. To Mr.S.C.Herold Singh, Advocate in SR No.99463

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