



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2019

CORAM:

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

Crl.O.P. (MD)No.9608 of 2019

and

Crl.M.P. (MD)Nos.6109 and 6110 of 2019

1.Ayyan Arul
2.Meenal
3.Sowmiya
4.Vivek
5.Karthi
6.Palani

...Petitioners/Accused

-Vs-

Pathinettan

... Respondent/Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in P.R.C.No.13 of 2019, on the file of the Judicial Magistrate Court No.II, Sivagangai and quash the same as illegal.

For Petitioners : Mr.K.Neelmegam
For Respondent : Mr.R.Anandharaj
Additional Public Prosecutor

O R D E R

This petition has been filed to quash the proceedings in P.R.C.No.13 of 2019, on the file of the Judicial Magistrate Court No.II, Sivagangai.

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 learned Judicial Magistrate Court No.II, Sivagangai has taken on file in P.R.C.No.13 of 2019, for the offences under Sections 147, 148, 294 (b), 323, 324, 307, 429, 451 of IPC and Section 4 of TNPHW Act, as against the petitioners. Hence he prayed to quash the same.

3. The learned Additional Public Proescutor would submit that some of the witnesses have been examined in this case.

4. Heard Mr.K.Neelmegam, learned counsel appearing for the petitioners, Mr.Mr.R.Anandharaj, learned Additional Public Proescutor appearing for the respondent.



5. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **CrI.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 **CrI.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.

7. In view of the above discussion, this Court is not inclined to quash the proceedings in P.R.C.No.13 of 2019, pending on the file of the learned Judicial Magistrate No.II, Sivagangai. Hence, this Criminal Original Petition stands dismissed. Consequently, Crl.M.P (MD) No.6109 of 2019 stands closed and Crl.M.P(MD) No.6110 of 2019 is allowed. However, the trial Court is directed to complete the committal proceedings in P.R.C.No.13 of 2019 within a period of one month from the date of receipt of a copy of this order and thereafter, 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(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

sj i

To

1.The Judicial Magistrate No.II, Sivagangai.

+1CC TO MR.K.NEELAMEGAM, Advocate Sr. No. 99494

Crl.O.P. (MD) No.9608 of 2019
19.11.2019

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