



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:13.11.2019

CORAM:

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

WEB COPY

Crl.O.P.(MD) No.16535 of 2019

and

Crl.M.P(MD) Nos.9804 and 9805 of 2019

1. M.Vinu Seba
2. V.Kumar
3. V.Chandran

... Petitioners

Vs.

1. The Sub Inspector of Police
Vellichanthai Police Station
Kanyakumari District
(Crime No.26 of 2016)

2. Arulsamy

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records pertaining to Charge Sheet in C.C.No.49/2017 pending before the Principal District Munsif cum Judicial Magistrate, Eraniel in Cr.No.26/2016 dt.21.01.2016 on the file of the respondent No.1 offences U/s.294(b), 323, 324, 427 and 506(ii) of IPC and quash the same as illegal.

For Petitioners : Mr.S.Louis

For Respondents : Mr.K.Suyambulinga Bharathi
No.1 Government Advocate(Crl.Side)

O R D E R

This petition has been filed to quash the proceedings in C.C.No.49/2017 pending before the Principal District Munsif cum Judicial Magistrate, Eraniel, as against this petitioners.

2. The learned Counsel appearing for the petitioners would submit that the petitioners are innocent 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. 26 of 2016 for the offences under Sections 294(b), 323, 324, 427 and 506(ii) of IPC, as against the petitioners and taken cognizance in CC 49 of 2017. Hence he prayed to quash the same.

<https://hcservices.courts.gov.in/hcservices> 3. The learned Government Advocate(Crl.Side) would submit



that the case has been transferred to the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Nagercoil.

4. Heard Mr.S.Louis learned counsel appearing for the petitioner and Mr.K.Suyambulinga Bharathi, learned Government Advocate(Crl.Side) appearing for the first respondent.

5. 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.

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 Special 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 applicable to this case and as such, the points raised by the petitioner 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.49/2017 pending before the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Nagercoil. Hence this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition in Crl.M.P(MD) No.9804 of 2019 is closed and Crl.M.P(MD) No.9805 of 2019 stands allowed. However, the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Nagercoil 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 (CRL.SIDE)

// True Copy //

Sub Assistant Registrar (CS)

aav

To

1. The Judicial Magistrate,
Fast Track Court (Magisterial Level), Nagercoil

2. The Principal District Munsif cum
Judicial Magistrate, Eraniel



3. The Sub Inspector of Police
Vellichanthai Police Station
Kanyakumari District

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

+1 CC to M/s.S.LOUIS, Advocate (SR-98369[F] dated 14/11/2019)

Crl.O.P.(MD) No.16535 of 2019
and
Crl.M.P(MD) Nos.9804 and 9805 of 2019
13.11.2019

KM/(28.11.2019) 4P 6C