



BEFORE THE MADURAI BENCH OF MADURAI HIGH COURT
DATED:13.11.2019
CORAM:

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

WEB COPY

Crl.O.P.(MD) No.16549 of 2019
and
Crl.M.P(MD) No.9825 of 2019

1. Jeyan @ Jeyakumar
2. Jeyapaul @ Solomon
3. Joe @ Joe Gnanasingh
Petitioners

...

Vs.

1. The Sub Inspector of Police,
Nithiravilai Police Station
Kanyakumari District

2. Joseph Sunnu

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records pertaining to the Charge Sheet in S.T.C. NO. 317 of 2019 for offence U/s. 294(b), 323 and 506 (i) of IPC pending before the learned Judicial Magistrate No.II, Kuzhithurai, Kanyakumari District in Crime NO. 35 of 2018 dated 14.02.2018 on the file of the first respondent and quash the same as illegal.

For Petitioners : Mr.J.Pandidorai

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 S.T.C. NO. 317 of 2019 pending before the learned Judicial Magistrate No.II, Kuzhithurai, Kanyakumari District, as against this petitioners.

2. The learned Counsel appearing for the petitioners would submit that the petitioners are innocents 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. 35 of 2018 for the offences under Sections 294(b), 323 and 506(i) of IPC, as against the petitioners and taken cognizance for in STC No.317 of 2019. 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.J.Pandi dorai learned counsel appearing for the petitioners and Mr.K.Suyambulinga Bharathi, learned Government Advocate(Crl.Side) appearing for the first respondent.

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 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 S.T.C. NO. 317 of 2019 pending before the learned Judicial Magistrate No.II, Kuzhithurai, Kanyakumari District. Hence this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

8. The personal appearance of the petitioner before the trial Court is dispensed with, except the dates on which, the trial Judge insisted the petitioner for his appearance.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Judicial Magistrate No.II, Kuzhithurai, Kanyakumari District

2. The Sub Inspector of Police,
Nithiravilai Police Station
Kanyakumari District

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

+1 CC to M/s.J.PANDI DORAI, Advocate (SR-98194[F] dated
14/11/2019)

Crl.O.P.(MD) No.16549 of 2019

and

Crl.M.P(MD) No.9825 of 2019

sma/02/12/19/3p/5c

13/11/19