



WEB COPY

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.5319 of 2018

and

Crl.M.P (MD)Nos.2579 and 2580 of 2018

1.Leeli Pushpam

2.Alexander

... Petitioners/Accused Nos.1 & 2

Vs.

J.Priyamol

... Respondent/Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in C.C.No.115 of 2017 on the file of the learned Judicial Magistrate No.II, Kuzhithurai and quash the same.

For Petitioners : Mr.K.P.Narayanakumar

O R D E R

This petition has been filed to quash the proceedings in C.C.No.115 of 2017 on the file of the learned Judicial Magistrate No.II, Kuzhithurai, as against the petitioners.

2. Heard both sides.

3. A careful perusal of entire materials available on record, the charge sheet discloses a prima facie offence against the petitioners 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.

4. 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:

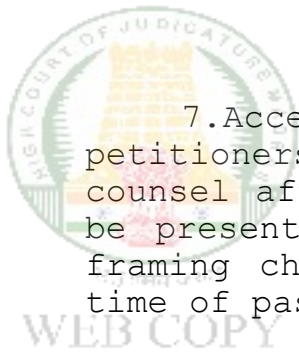
"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several 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 this case and as such, the points raised by the petitioners cannot be considered by this Court under Section 482 Cr.P.C.

5. Hence, the Criminal Original Petition is dismissed. However, considering the fact that the trial is pending from the year 2017, the learned Judicial Magistrate No.II, Kuzhithurai, is directed to proceed with the trial and complete the same within a period of twelve weeks from the date of receipt of a copy of this order.

6. At this juncture, the learned Counsel for the petitioners submitted that the presence of the petitioners before the Trial Court may be dispensed with.



7.Accepting the said submission, 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.

8.Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (records)

// True Copy //

Sub Assistant Registrar(CS)

vsd

To

The Judicial Magistrate No.II,
Kuzhithurai.

+1 CC to Mr.K.P. NARAYANA KUMAR, Advocate (SR-99785[F] dated
20/11/2019)

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