



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.11.2019

CORAM:

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

Crl.O.P. (MD) No.6188 of 2018

WEB COPY

Jein @ Bernanth Jehin ... Petitioner/Accused No.2

Vs.

1. The State Represented by
The Inspector of Police,
Colachel Police Station,
Kanniyakumari District.
(Crime No.319 of 2009) ... Respondent/Complainant

2.Vinu ... Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to the Charge Sheet in C.C.No.65 of 2010 on the file of the learned Judicial Magistrate, Eraniel, Kanniyakumari District, in Crime No.319 of 2009 dated 25.12.2009 on the file of the first respondent police for alleged offences under Sections 294 (b), 324, 342 r/w 34 of IPC, to quash the same as against the petitioner as illegal.

For Petitioner : Mr.D.Balamurugapandi
For R1 : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl.Side)

ORDER

This petition has been filed to quash the proceedings in C.C.No.65 of 2010 on the file of the learned Judicial Magistrate, Eraniel, Kanniyakumari District.

2. The learned Counsel appearing for the petitioner would submit that the petitioner is an innocent person and he has not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.319 of 2009 for the offences under Sections 294 (b), 324, 342 r/w 34 of IPC, as against the petitioners and taken cognizance for in C.C.No.65 of 2010. 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.D.Balamurugapandiy, 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 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 C.C.No.65 of 2010 on the file of the learned Judicial Magistrate, Eraniel, Kanniyakumari District. Hence this Criminal Original Petition stands dismissed. 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.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

dss

To

1. The Judicial Magistrate, Eraniel,
Kanniyakumari District.
2. The Inspector of Police,
Colachel Police Station,
Kanniyakumari District.
3. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.

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MA (CO)
TR (21.11.2019) 3P 4C