



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 31.10.2019

CORAM :

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

Crl.O.P.(MD)No.7290 of 2018
and
Cr.M.P.(MD)Nos.3467 & 3468 of 2018

M.Kumaresan ... Petitioner/Sole Accused

Vs.

1.The State Rep by
The Inspector of Police,
Thalamuthunagar Police Station,
Thoothukudi.
(Crime No.15 of 2014)

... Respondent/Complainant

2.C.Arul Balamurugan

... Respondent/Defacto
Complainant

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to call for the records in connection with the impugned charge sheet in C.C.No.314 of 2016 pending on the file of the learned Judicial Magistrate No.II, Thoothukudi and quash the same.

For Petitioner : Mr.G.Thalaimutharasu

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

O R D E R

This petition has been filed to quash the proceedings in C.C.No.127 of 2015 pending on the file of the learned Judicial Magistrate No.II, Thoothukudi.

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. 15 of 2014 for the offences under Sections 468, 471 and 506 (ii) IPC as against the petitioner and taken cognizance for in C.C.No.127 of 2015. 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.G.Thalaimutharasu, learned counsel appearing for the petitioner and Mr.K.Suyambulinga Bharathi, learned Government Advocate (Crl.Side) appearing for the first respondent.

5. It is seen from the First Information Report that there is a specific allegation as against the petitioner, which has to be investigated. Further the FIR is not an encyclopedia and it need not contain all facts. Further, it cannot be quashed in the threshold. This Court finds that the FIR discloses prima facie commission of cognizable offence and as such this Court cannot interfere with the investigation. The investigating machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

6. 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.

7. 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 petitioner cannot be considered by this Court under Section 482 Cr.P.C.

8. In view of the above discussion, this Court is not inclined to quash the proceedings in Judicial Magistrate No.II, Thoothukudi. Hence this Criminal Original Petition stands dismissed. Consequently, Crl.M.P(MD) No.3468 of 2018 and Crl.M.P(MD) No.3469 of 2018 are closed. 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 (co)

// True Copy //

Sub Assistant Registrar(CS)

dss
To

- 1.The Judicial Magistrate No.II,
Thoothukudi.
- 2.The Inspector of Police,
Thalamuthunagar Police Station,
Thoothukudi.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD)No.7290 of 2018 and
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