



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2019

CORAM:

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

Crl.O.P.(MD)Nos.9435 of 2018

and

Crl.M.P.(MD)Nos.4134 and 4135 of 2018

WEB COPY

Arumugam @ Siva Arumugam ... Petitioner/1st Accused

Vs

The State Rep. by

1.The Inspector of Police,

Civil Supply Crime Investigation Department,

(CSCID), Madurai.

(Ref. Crime No.646 of 2008) .. 1st Respondent/Complainant

2.Tmt.M.Parameswari,

Taluk Supply Officer,

Melur, Madurai District. ...2nd Respondent/Defacto Complainant

Prayer : Criminal Original Petition is filed under Section 482 Cr.P.C. to call for the records pertaining to the proceedings in C.C.No.38 of 2010, on the file of the Judicial Magistrate No.III, Madurai and quash the same in so far as the petitioner is concerned.

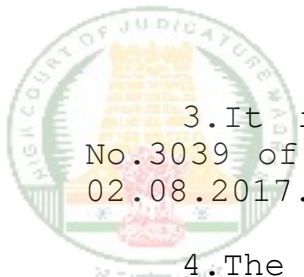
For Petitioner : Mr.Veera Kathiravan
Senior counsel
for M/s.Veera Associates

For R1 : Mr.R.Anandharaj
Additional Public Prosecutor

ORDER

This petition has been filed to quash the proceedings in C.C.No.38 of 2010, on the file of the learned Judicial Magistrate No.III, Madurai, in so far as the petitioner is concerned.

2.The learned Senior 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.646 of 2008 for the offences under Section 6(4) of TNSC (RDCS) Order 1982 r/w Section 7(1)(a)(ii) of EC Act, 1955, as against the petitioner and taken cognizance for in C.C.No.38 of 2010. Hence he prayed to quash the same.



3.It is seen that the petitioner earlier filed Crl.O.P.(MD) No.3039 of 2016 before this Court and the same was disposed of on 02.08.2017. Therefore, this Court finds no merit in this petition.

4.The learned Additional Public Prosecutor would submit that some of the witnesses have been examined in this case.

5.Heard Mr.Veera Kathiravan, learned Senior Counsel appearing for the petitioner and Mr.R.Anandharaj, learned Additional Public Prosecutor appearing for the first respondent.

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 petitioners 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 C.C.No.38 of 2010, pending on the file of the learned Judicial Magistrate No.III, Madurai. Hence this Criminal Original Petition stands dismissed. Consequently, Crl.M.P (MD) No.4135 of 2018 stands allowed and Crl.M.P(MD) No.4134 of 2018 is closed. However, the trial Court is directed to complete the trial within a period of three months from the date of receipt of copy of this Order.

9. Further, the personal appearance of the petitioner is dispensed with and they shall be represented by a counsel after filing appropriate application. The petitioner 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 (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Judicial Magistrate No.III, Madurai.
2. The Inspector of Police,
Civil Supply Crime Investigation Department,
(CSCID), Madurai.



Copy to

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

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-99719[F] dated
20/11/2019)

Crl.O.P.(MD)No.9435 of 2018

19.11.2019

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