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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.9450 of 2018
and
Cr.M.P.(MD)Nos.4165 & 4166 of 2018

1.Titus John

2.Jobin Paul

3.Steephen ... Petitioners/Accused Nos.1 to 3

Vs.

1.The Inspector of Police,
Kaliyakkavilai Police Station,
Kanyakumari District.
(Crime No.13/2018) ...1st Respondent/Complainant

2.Kamalasanan ...2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to call for the records relating to the proceedings in S.T.C.No.225 of 2018 on the file of the learned Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District and quash the same.

For Petitioners : Mr.M.Saravanakumar

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

For R2 : M/s.J.Anandha valli

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O R D E R

This petition has been filed to quash the proceedings in S.T.C.No.225 of 2018 on the file of the learned Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District.

2. The learned Counsel appearing for the petitioners would submit that the petitioners are innocent persons 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. 13 of 2018 for the offences under Sections 427, 297 and 506 (i) of IPC, as against the petitioners and taken cognizance for in S.T.C.No.225 of 2018. 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.M.Saravanakumar, learned counsel appearing for the petitioners, Mr.K.Suyambulinga Bharathi, learned Government Advocate (Crl.Side) appearing for the first respondent and learned counsel appearing for the second respondent.

5.It is seen from the First Information Report that there is a specific allegation as against the petitioners, 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*

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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 Invstigation 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 S.T.C.No.225 of 2018 on the file of the learned Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District. Hence this Criminal Original Petition stands dismissed. Consequently, Crl.M.P(MD) No.4166 of 2018 stands allowed and Crl.M.P(MD) No.4165 of 2018 is 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.

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9. Further, 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.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar(CS)

dss

To

1.The Judicial Magistrate No.I,
Kuzhithurai.

2.The Inspector of Police,
Kaliyakkavilai Police Station,
Kanyakumari District.

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

+1 CC to M/s.J.ANANDHAVALLI, Advocate (SR-96311[F] dated 06/11/2019)

+1 CC to M/s.M.SARAVANA KUMAR, Advocate (SR-96562[F] dated 07/11/2019)

Crl.O.P.(MD)No.9450 of 2018
and
Cr.M.P.(MD)Nos.4165 & 4166 of 2018
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KK/SAR/18.11.2019/4P-6C/

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