



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 11.11.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No.15881 of 2019

and

Crl.M.P. (MD) Nos.9413 and 9415 of 2019

WEB COPY

1.Chelladurai
2.Sankar
3.Subin

... Petitioners/Accused No.4 to 6

Vs

1.The Inspector of Police,
Kulachal Police Station,
Kanyakumari District.

... Respondent/Complainant

2.S.Sisil

... Respondent/Defacto Complainant

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records in P.R.C.No.54 of 2016 on the file of the Principal District Munsif cum Judicial Magistrate, Kulachal, Kanyakumari District and quash the same as illegal.

For Petitioner : Mr.Kalichamy

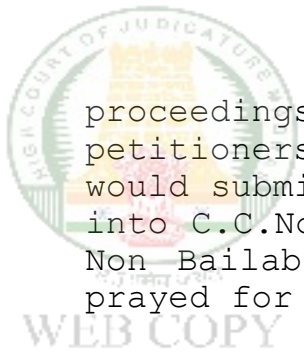
For Respondents : Mr.K.Suyambulinga Bharathi, G.A.
(Crl. Side) for R1

O R D E R

This petition has been filed to quash the criminal proceedings in in P.R.C.No.54 of 2016 on the file of the Principal District Munsif cum Judicial Magistrate, Kulachal, Kanyakumari District as against the petitioners.

2.The learned counsel appearing for the petitioners would submit that the petitioners are innocent persons and they have been falsely implicated in the case with oblique motive. The respondent police without looking into the factual facts of the case registered the case only on the false allegations and without properly investigating the persons involved in the crime. Hence. He prayed for quashment of the criminal proceedings.

3.The learned Government Advocate (criminal side) submitted that there are materials available to proceed with the case as against the petitioners herein and at the threshold, the criminal



proceedings cannot be quashed and the charges framed against the petitioners have to be gone into a full-fledged trial. Further, he would submit that the case in P.R.C.No.54 of 2016 has been converted into C.C.No.102 of 2019 and as against A6/the 3rd petitioner herein, Non-Bailable Warrant has been issued on 11.12.2018 and hence, he prayed for dismissal of the petition.

4.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.

5.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**, dated 17.10.2019 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."

6. Considering the above said judgments, this Court is of the view that there are specific allegations as against the petitioners. The points raised by the learned counsel appearing for the petitioners could be decided only at the time of trial. Further, the mixed question of facts can not be considered by this Court that too under Section 482 of Cr.P.C. Therefore, the above judgments are squarely applicable 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 discussions, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is also dismissed. The trial Judge is directed to complete the trial and disposed of the case in C.C.No.102 of 2019 on the file of the Judicial Magistrate, Eraniel within a period of six (6) months from the date of receipt of a copy of this order. The personal appearance of the petitioners 1 and 2 is dispensed with before the trial Court, except the dates on which, the learned trial Judge insisted their personal appearance before the trial Court. Since non bailable warrant is pending as against the 3rd petitioner, he is not entitled to the relief of dispense with the appearance before the trial Court.

Sd/-

Assistant Registrar(Crl Side)

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Sub Assistant Registrar(CS)

Arul
To

1. The Principal District Munsif cum Judicial Magistrate,
Kulachal, Kanyakumari District
2. The Judicial Magistrate, Eraniel.
3. The The Inspector of Police,
Kulachal Police Station,
Kanyakumari District.



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

+1CC TO MR.S.KALICHAMY, Advocate Sr. No. 98015

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Order made in
CRL.O.P (MD) No.15881 of 2019
11.11.2019

KM(CO)
TR(04.12.2019) 4P 6C