



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 07.11.2019

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No.9823 of 2018

and

Crl.M.P. (MD) Nos.4378 and 4424 of 2018

WEB COPY

1.M.Thangaswamy

... Petitioner/Accused No.1

Vs

1.The Inspector of Police,
Nesamony Nagar Police Station,
Kanyakumari District,
Crime No.130 of 2014

... Respondent/Complainant

2.R.Jayakumar

... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to quash the charge sheet in C.C.No.222 of 2014 on the file of the Judicial Magistrate Court No.II, Nagercoil, Kanyakumari District.

For Petitioner : Mr.S.R.Anbarasu

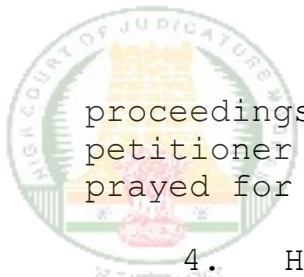
For Respondents : Mr.K.Suyambulinga Bharathi, G.A.
(Crl. Side) for R1

O R D E R

This petition has been filed to quash the charge sheet in C.C.No.222 of 2014 on the file of the Judicial Magistrate Court No.II, Nagercoil, Kanyakumari District.

2.The learned counsel appearing for the petitioner would submit that the petitioner is an innocent person and he has 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 petitioner herein and at the threshold, the criminal



proceedings cannot be quashed and the charges framed against the petitioner have to be gone into a full-fledged trial and hence, he prayed for dismissal of the petition.

4. Heard both sides and perused the materials available on records.

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5. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **CrI.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 **CrI.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."

7. Considering the above said judgments, this Court is of the view that there are specific allegations as against the petitioner. The points raised by the learned counsel appearing for the petitioner 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 petitioner cannot be considered by this Court under Section 482 Cr.P.C.

8. In view of the above discussions, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are closed. The trial Judge is directed to complete the trial and dispose of the case in C.C.No.222 of 2014 on the file of the Judicial Magistrate Court No.II, Nagercoil, Kanyakumari District, within a period of six (6) months from the date of receipt of a copy of this order. The personal appearance of the petitioner before the trial Court is dispensed with, except the dates on which, the trial Judge insisted the petitioner for his personal appearance.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

Arul

To

1. The Inspector of Police, Nesamony Nagar Police Station,
Kanyakumari District.

2. The Judicial Magistrate No.II, Nagercoil.

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

CRL.O.P (MD) No.9349 of 2018

07.11.2019

MA (CO)

TR(26.11.2019) 3P 4C

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