



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.11.2019

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.(MD)No.10024 of 2018

and

CrI.MP(MD)Nos.4485 & 4486 of 2018

WEB COPY

T.Richard Kingsley Kumar ... Petitioner/Respondent
Vs.

1.E.Praisly Gift

2.Minor.R.Daniel Bennial Richard

(minor second respondent represented by his
mother first respondent) ... Respondents/Petitioners

Prayer: Criminal Original Petition filed under section 482 of
Criminal Procedure Code, to call for the records pertaining to
M.C.No.19 of 2017 on the file of the learned Judicial Magistrate,
Court, Padmanabhapuram and quash the same as illegal, arbitrary and
violation of principles of law.

For Petitioner: Mr.V.M.Balamohan Thampi

O R D E R

This petition has been filed to quash the proceedings in
M.C.No.19 of 2017 on the file of the learned Judicial Magistrate,
Court, Padmanabhapuram.

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 respondent filed a petition as against the petitioner in
M.C.No.19 of 2017. Hence he prayed to quash the same.

3. 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.

4. 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.

5. In view of the above discussion, this Court is not inclined to quash the proceedings in M.C.No.19 of 2017 on the file of the learned Judicial Magistrate, Court, Padmanabhapuram. Hence this Criminal Original Petition stands dismissed. Consequently, Crl.M.P(MD) No.4485 of 2018 and Crl.M.P(MD) No.4486 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 (Ad-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Judicial Magistrate, Court,Padmanabhapuram.

2 The Additional Public Prosecutor,

Madurai Bench of Madras High Court, Madurai.

Dss/sma/26/11/19/2p/3c

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