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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.11.2019**

CORAM:

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

Crl.O.P.(MD)No.10848 of 2018

and

Crl.M.P.(MD)Nos.4901 and 4902 of 2018

1.Raja
2.Sundari ...Petitioners/Respondents

-Vs-

1.Kamalakrishnaveni
2.Apsara ... Respondents/Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, praying to call for the records and to quash the D.V.O.P.No.1 of 2016 on the file of the District Munsif – Cum – Judicial Magistrate Court, Peraiyur.

For Petitioners : Mr.K.Suresh
For Respondents : Mr.R.S.T.Ravanan @ Ramasubramanian

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in D.V.O.P.No.1 of 2016 on the file of the District Munsif-cum-Judicial Magistrate Court, Peraiyur, as against the petitioners.

2.The learned counsel for the petitioners submitted that the first respondent got married the petitioner's son namely Saravanakumar on 02.09.2011. The petitioner's son died on 18.09.2011. One female child was born through their wedlock. After the demise of Saravanakumar, the first respondent decided to separate her along with the child from the petitioners. Hence, the first respondent asked her Seethana property. He further submitted that in order to safeguard the life of the first respondent and their grand-daughter, they arrived at an amicable settlement on 29.11.2012, even though the first respondent filed D.V.O.P.No.1 of 2016 on the file of the learned District Munsif-cum-Judicial Magistrate Court, Peraiyur.

3. A careful perusal of entire materials available on record, the charge sheet discloses a *prima facie* offence against the petitioners and there is no reason to interfere with the same. It is also 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:-

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> " 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 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."*

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The above judgment is 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.

5.Hence, the Criminal Original Petition is dismissed. However, considering the fact that the trial is pending from the year 2016, the District Munsif-Cum-Judicial Magistrate Court, Peraiyur, is directed to proceed with the trial and complete the same within a period of six months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AS)

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Sub Assistant Registrar(CS)

vsd

To

1.The District Munsif -cum-Judicial Magistrate Court,
Peraiyur.

Crl.O.P.(MD)No.10848 of 2018
and
Crl.M.P.(MD)Nos.4901 and 4902 of 2018
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