



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 25.11.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No.11252 of 2018

and

Cr1.M.P. (MD) Nos.5112 and 5113 of 2018

Benjamin Munigety ... Petitioner / Accused No.2

Vs

1.State rep. by
The Inspector of Police,
District Crime Branch,
Madurai District
Crime No.37 of 2010 ... 1st Respondent / Complainant

2.Vasanth ...2nd Respondents / Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in C.C.No.208 of 2011 dated 04.08.2011 pending on the file of the Judicial Magistrate No.1, Madurai and quash the same as against this Petitioner.

For Petitioner : Mr.K.Kevinkaran

For Respondents : Mr.K.Suyambulinga Bharathi, G.A.
(Cr1. Side) for R1

O R D E R

This petition has been filed to quash the criminal proceedings in in C.C.No.208 of 2011 dated 04.08.2011 pending on the file of the Judicial Magistrate No.1, Madurai.

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.

5.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.

6.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."

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 also dismissed. The Judicial Magistrate No.1, Madurai is directed to complete the trial and dispose of the case in C.C.No.208 of 2011, 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.

9. Now, the learned counsel appearing for the petitioner submits that already some of the victims were settled, for which, the learned Government Advocate (criminal side) would submit that so many victims are not settled. Therefore, the petitioner is at liberty to approach this Court. after settling all the victim, once again.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)



To

1.The Judicial Magistrate No.1, Madurai.

2.The Inspector of Police,
District Crime Branch,
Madurai District.

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

+1 CC to M/s.K. KEVIN KARAN, Advocate (SR-101019[F] 25/11/2019)

Order made in
CRL.O.P (MD) No.11252 of 2018
25.11.2019

Arul

SDS (19.12.2019) 4P 5C