



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **14.11.2019**

CORAM:

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

Crl.O.P. (MD)No.11879 of 2018

and

Crl.M.P(MD)Nos.5388 and 5389 of 2018

P.Lakshmi ...Petitioner/Accused No.2

Vs.

1.State represented by
The Inspector of Police,
Pudukottai Police Station,
Tuticorin District.
(In Crime No.133 of 2013)

... 1st Respondent/Complainant

2.M.Ramalakshmi ...2nd Respondent/Defacto Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in C.C.No.1099 of 2017 pending on the file of the learned Judicial Magistrate No.III, Tuticorin and quash the same as against this petitioner.

For Petitioner : Mr.M.A.Mathew Berchmans

For R1 : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl.side)

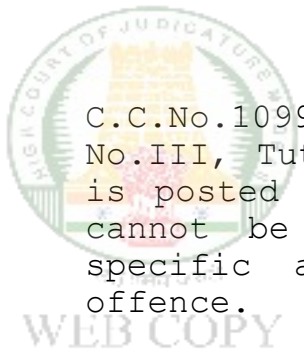
For R2 : Mr.S.Manthira Lingeshwaran

O R D E R

This petition has been filed to quash the proceedings in C.C.No.1099 of 2017 pending on the file of the learned Judicial Magistrate No.III, Tuticorin, as against the petitioner.

2. Heard both sides.

3.The learned Government Advocate (criminal side) would submit that after completion of investigation the respondent police has filed a final report and the same has been taken cognizance in



C.C.No.1099 of 2017 on the file of the learned Judicial Magistrate No.III, Tuticorin. The prosecution examined P.W.1 to P.W.7 and it is posted for further evidence. At this stage, the quash petition cannot be entertained. Further it is also seen that there is specific allegation as against the petitioner to attract the offence.

4. A careful perusal of entire materials available on record, the charge sheet discloses a prima facie offence against the petitioner 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:-

" 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**, 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



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.

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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 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.

6. Hence, the Criminal Original Petition is dismissed. However, considering the fact that the trial is pending from the year 2017, the learned Judicial Magistrate No.II, Tuticorin, is directed to proceed with the trial and complete the same within a period of three months from the date of receipt of a copy of this order.

7. At this juncture, the learned Counsel for the petitioner submitted that the presence of the petitioner before the Trial Court may be dispensed with.

8. Accepting the said submission, the personal appearance of the petitioner is dispensed with and he shall be represented by a counsel after filing appropriate application. The petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment.

9. Accordingly, this Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar (CS)

vsd

To

1. The Judicial Magistrate No.III,
Tuticorin.



2.The Inspector of Police,
Pudukottai Police Station,
Tuticorin District.

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

+1 CC to Mr.S. MANDHIRALINGESWARAN, Advocate (SR-98309[F] dated
14/11/2019)

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