



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD)No.12473 of 2018

and

Crl.M.P.(MD)Nos.5650 and 5651 of 2018

P.Pathrose

... Petitioner/Accused No.1

-Vs-

1.The Inspector of Police,
Eraniel Police Station,
Kanyakumari District.

... Respondent/Complainant

2.Mohan

... Respondent/Defacto Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in connection with charge sheet in C.C.No.85 of 2017 pending before the Judicial Magistrate, Eraniel, Kanyakumari District and quash the same as against the petitioner.

For Petitioner : Mr.R.Russel Raj

For 1st Respondent : Mr.K.Suyambulinga Bharathi

Government Advocate (Crl. Side)

For 2nd Respondent : Mr.J.John Jayakumar

O R D E R

This petition has been filed to quash the proceedings in C.C.No.85 of 2017 on the file of the Judicial Magistrate, Eraniel, Kanyakumari District.

2.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (criminal side) appearing for the first respondent.

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 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.

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 C.C.No.85 of 2017 on the file of the Judicial Magistrate, Eraniel, Kanyakumari District. However, the Judicial Magistrate, Eraniel, Kanyakumari District is directed to complete the trial in C.C.No.85 of 2017 within a period of six months from the date of receipt of copy of this Order.



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

7.Accepting the said submission, the personal appearance of the petitioner, before the trial Court, 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.

8.With the above observations, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

vsg

To

1.The Judicial Magistrate,
Eraniel,
Kanyakumari.

2.The Inspector of Police,
Eraniel Police Station,
Kanyakumari District.

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

+1 CC to Mr.J. JOHN JAYA KUMAR, Advocate (SR-100053[F] dated 21/11/2019)

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