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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.11.2019
CORAM
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN
CRL.O.P (MD) No.16139 of 2019
and
Crl.M.P.(MD) Nos.9606 and 9608 of 2019

1. M.Gopalakrishnan
2.R.Bhasikumaran Nair ... Petitioners

Vs

1.The Inspector of Police,
Economic Offences Wing
(Finance Institution)
Kanyakumari District
at Nagercoil

2.Vijayakumaran ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in C.C.No.376 of 2019 on the file of the Judicial Magistrate No.I, Kuzhithurai and and quash the same

For Petitioners : Mr.S.C.Herold Singh

For Respondents : Mr.K.Suyambulinga bharathi, G.A. (Crl. Side) for R1

O R D E R

This petition has been filed to quash the proceedings in C.C.No.376 of 20196 on the file of the Judicial Magistrate No.I, Kuzhithurai , having been taken cognizance for the offences under Sections 147,452,427,294(b),352 and 506(i) of IPC as against this petitioners.

2.The learned counsel appearing for the petitioners would submit that the petitioners are innocent and they have been falsely implicated in this case with oblique motive. The respondent police conducted the investigation in a mechanical manner and filed the charge sheet as against the petitioners and hence, sought for quashment of the proceedings.

3.The learned Government Advocate (criminal side) submitted that there are materials available to proceed with the case as against the petitioners herein and at the threshold, the criminal proceedings cannot be quashed and the charges framed against the

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petitioners have to be gone into a full-fledged trial. Further, he would submit that the trial has also been commenced and hence, he prayed for dismissal of the petition.

4. Heard both sides and perused the materials available on records.

5.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.*

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 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*

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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 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.

7.In view of the above citations, the criminal proceedings as against the petitoners cannot be quashed at its threshold and it has to be gone in to by full fledged trial. Therefore, the charges cannot be quashed at this stage and this criminal original petition is liable to be dismissed.

8.Accordingly, this criminal original petition is dismissed with the liberty to the petitioners to raise all the grounds before the trial Court. Consequently, connected miscellaneous petitions are also dismissed. Further the trial Court is directed to complete the trial within a period of nine months from the date of receipt of a copy of this order.

9. The personal appearance of the petitioners before the trial Court is dispensed with, except the dates on which, the trial Judge insisted the petitioner for their appearance.

Sd/-

Assistant Registrar (w)

// True Copy //

Sub Assistant Registrar(CS)

aav

To

1. The Judicial Magistrate No.I, Kuzhithurai

2.The Inspector of Police,
Economic Offences Wing
(Finance Institution)
Kanyakumari District
at Nagercoil

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

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-97074[F] dated 08/11/2019)

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