



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.11.2019

CORAM:

WEB COPY

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

Crl.O.P. (MD) No.16072 of 2019

and

Crl.M.P(MD) Nos.9577 and 9578 of 2019

1. Raja
2. Esakkimuthu ... Petitioners/Accused Nos.1 & 2

Vs.

1. The State rep by
The Inspector of Police,
Alwarthirunagari Police Station
Srivaikundam Taluk
Thoothukudi District ... 1st Respondent/Complainant

2. Balan ... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to Call for the records in connection with the charge sheet in C.C.No.466 of 2016 pending on the file of the learned Judicial Magistrate, Srivaikundam, Thoothukudi District and quash the same insofar as the petitioners are concerned.

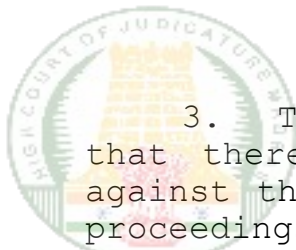
For Petitioners : Mr.S.Sarvagaprabu

For Respondents :Mr.K.Suyambulinga Bharathi
No.1 Government Advocate (Crl.Side)

O R D E R

This petition has been filed to quash the proceedings in C.C.No.466 of 2016 pending on the file of the learned Judicial Magistrate, Srivaikundam, Thoothukudi District , as against this petitioners

2. The learned Counsel appearing for the petitioners would submit that the petitioners are innocents and they have not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.192 of 2016 for the offences under Sections 294(b), 323 and 506(ii) of IPC , as against the petitioners and taken cognizance for in C.C.No.466 of 2016. Hence he prayed to quash the same.



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 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 Mr. S.Sarvaga Prabu, learned counsel appearing for the petitioners and Mr.K.Suyambulinga Bharathi, learned Government Advocate(Crl.Side) appearing for the first respondent.

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 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.

7. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.466 of 2016 pending on the file of the learned Judicial Magistrate, Srivaikundam, Thoothukudi District. Hence this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition in Crl.M.P(MD) No. 9577 of 2019 is closed and Crl.M..P(MD) No 9578 of 2019 is ordered. However, the trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this Order.

8. Further, the personal appearance of the petitioners are dispensed with and they shall be represented by a counsel after filing appropriate application. The petitioners 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.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

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To

1. The Judicial Magistrate,
Srivaikundam, Thoothukudi District
2. The Inspector of Police,
Alwarthirunagari Police Station
Srivaikundam Taluk
Thoothukudi District



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

+1 CC to M/s.S.SARVAGAN PRABHU, Advocate (SR-96537[F] dated
06/11/2019)

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and

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