



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.11.2019

CORAM:

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

Crl.O.P. (MD) No.16842 of 2019

and

Crl.M.P. (MD) Nos.10006 & 10007 of 2019

1. Tamil Selvan

2. Jeyakumar

3. Saravanan

4. Arul Jothi

...Petitioners/Accused No.1 to 4

-Vs-

1.The Deputy Superintendent Of Police,
Samayanallur Sub Division,
Samayanallur, Madurai District.

... Respondent No.1/Investigation Officer

2.The Inspector of Police

T.Vadipatti Police Station

Madurai District. (Crime No.3/2018)

... Respondent No.2/Complainant

3.Siva

... Respondent No.3/Defacto Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to the pending case in Special S.C.No.101 of 2018 on the file of the learned III Additional District Judge (PCR), Madurai and quash the same as illegal.

For Petitioners

: Mr.R.Karunanithi

For R1 and R2

: Mr.K.Suyambulinga Bharathi

Government Advocate(crl.side)

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in Special S.C.No.101 of 2018 on the file of the learned III Additional District Judge (PCR), Madurai.

2.Heard both sides.

3.A careful perusal of entire materials available on record, the final report discloses a *prima facie* offence against the petitioners 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:-

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" 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 judgments are squarely applied 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 discussions, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are also dismissed. The learned III Additional District Judge (PCR), Madurai, is directed to complete the proceedings in Special S.C.No.101 of 2018, within a period of six months from the date of receipt of a copy of this order.

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

7. Accepting the said submission, the personal appearance of the petitioners is 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-III)

// True Copy //

Sub Assistant Registrar(CS)

Ls

To

1. The II Additional District Judge (PCR), Madurai.

2. The Deputy Superintendent Of Police,
Samayanallur Sub Division,
Samayanallur, Madurai District.

3. The Inspector of Police
T.Vadipatti Police Station, Madurai District.

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

+1CC TO MR.R.KARUNANEDHI, Advocate Sr. No. 99852

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VR (CO)

TR (09.12.2019) 3P 6C