



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD)No.17734 of 2019

and

Crl.MP(MD)Nos.10436 & 10437 of 2019

WEB COPY

1.Pandi
2.M.Nagamalaiyan
3.N.Rajesh Kanan @ Muniyandi
4.M.Rajendran

...Petitioners/Accused Nos.1 to 4

-Vs-

1.The State rep by
The Inspector of Police,
Thirumangalam Town Police Station,
Madurai District.
(Crime No.265 of 2018)

... 1st Respondent/Complainant

2.B.Vidhya

... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the entire records from the lower Court to quash all the further proceedings in C.C.No.36 of 2019 pending on the file of the learned Judicial Magistrate, Thirumangalam, Madurai District, and quash the same.

For Petitioners	: Mr.T.K.Gopalan
For R1	: Mr.K.Suyambulinga Bharathi Government Advocate (Crl.Side)

O R D E R

This petition has been filed to quash the proceedings in C.C.No.36 of 2019 pending on the file of the learned Judicial Magistrate, Thirumangalam, Madurai District.

2. The learned Counsel appearing for the petitioners would submit that the petitioners are innocent persons 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.265 of 2018 for the offences under Sections 294 (b), 323, 506 (i), 109 of IPC and Section 4 of Tamilnadu Prohibition of Harassment of Woman Act, 2002, as against the petitioners and the same has been taken cognizance in C.C.No.88 of 2018 by the learned Judicial Magistrate, Thirumangalam, Madurai District. Hence he prayed to quash the same.



3. The learned Government Advocate (Crl.Side) would submit that some of the witnesses have been examined in this case.

4. Heard learned counsel appearing for the petitioners and learned Government Advocate (Crl.Side) appearing for the first respondent.

5. 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.

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 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 discussion, this Court is not inclined to quash the proceedings in C.C.No.36 of 2019 pending on the file of the learned Judicial Magistrate, Thirumangalam, Madurai District. Hence this Criminal Original Petition stands dismissed. Consequently, Crl.M.P(MD) No.10437 of 2019 stands partly allowed and Crl.M.P(MD) No.10436 of 2019 is closed. However, the trial Court is directed to complete the trial within a period of nine months from the date of receipt of copy of this Order.

8. Further, the personal appearance of the petitioners 2 to 4 is dispensed with and they shall be represented by a counsel after filing appropriate application. The petitioners 2 to 4 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 (records)

// True Copy //

Sub Assistant Registrar(CS)

dss

To

1. The Judicial Magistrate,
Thirumangalam, Madurai District
2. The Inspector of Police,
Thirumangalam Town Police Station,
Madurai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY

Crl.O.P.(MD)No.17734 of 2019

+1 CC to Mr.T.K. GOPALAN, Advocate (SR-102626[F] dated 29/11/2019)

Crl.O.P.(MD)No.17734 of 2019
and
Crl.MP(MD)Nos.10436 & 10437 of 2019
29.11.2019

MK (18.12.2019) 4P 5C