



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.11.2019

CORAM

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

CRL.O.P (MD) No.17237 of 2019

and

CrI.M.P.(MD) Nos.10181 and 10183 of 2019

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1.Arputharaj
2. Arockiyamary
3. Johnson

... Petitioners/A1 to A3

Vs

1.S.Arockiya Gnana Deepa
2. Minor. Esthar
(Rep.by natural guardian and mother
of the first respondent) ... Respondents/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in connection with the DVOP No. 10 of 2019 on the file of the learned Judicial Magistrate, Devakottai and quash the same in respect of petitioners.

For Petitioners : Mr.S.M.Sanjay

O R D E R

This petition has been filed to quash the proceedings in DVOP No. 10 of 2019 on the file of the learned Judicial Magistrate, Devakottai.

2. The learned Counsel appearing for the petitioners would submit that there are no specific allegation against the petitioners. He would also submit that DVOP No.16 of 2017 was already withdrawn by the complainant for the reason of getting amicable settlement between the parties, so the second petition should not be allowed, which is purely abuse of process of law. Hence they have filed the present petition to quash the proceedings.

3. Heard Mr.S.M.Sanjay learned counsel appearing for the petitioners.

4. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **CrI.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.

5. 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 petitioner cannot be considered by this Court under Section 482 Cr.P.C.

6. Considering the fact that there are serious allegations against the petitioner, which has to be investigated, this Court is not inclined to quash the proceedings in DVOP No. 10 of 2019 on the file of the learned Judicial Magistrate, Devakottai. Hence this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed. Further the petitioner is at liberty to raise all the grounds before the trial court. However, the trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of



7. 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.

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Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar(CS)

aav

To

The Judicial Magistrate, Devakottai

+1 CC to M/s.S.M. SANJAY, Advocate (SR-101076[F] dated 25/11/2019)

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SMA/17/12/19/3P/3C