

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.03.2020

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THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.19990 of 2016 and
Crl.M.P.Nos.9352 of 2016 & 1640 of 2020

1.Pandiyam
2.Thiyagu

... Petitioners/A1 & 2

Vs

1. The Inspector of Police,
Alangayam Police Station,
Vellore District

2.Kavitha ... Respondents/Complainant & Defacto Complainant

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records in pursuant to the PRC.No.7 of 2015 on the file of the Judicial Magistrate No.3, Thirupathur, Vellore District and quash the same.

For Petitioners: Mr.M.Sathish Kumar

For R1 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

For R2 : Mr.S.Ramajayam

ORDER

This petition has been filed to quash the proceedings in PRC.No.7 of 2015 on the file of the Judicial Magistrate No.3, Thirupathur, Vellore District, thereby taken cognizance for the offences under Sections 376 and 506 (i) IPC, in Crime No.3 of 2013, as against this petitioners.

2. The learned Counsel appearing for the petitioners would submit that the petitioners are innocent 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.3 of 2013 for the offences under Sections 376 and 506 (i) IPC, as against the petitioners and the same has been taken

cognizance in PRC.No.7 of 2015 on the file of the Judicial Magistrate No.3, Thirupathur, Vellore District. Hence he prayed to quash the same.

3. The learned Additional Public Prosecutor would submit that the trial has been commenced and some of the witnesses have been examined in this case.

4. Heard Mr.M.Sathish Kumar, the learned counsel appearing for the petitioners and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent, and Mr.S.Ramajayam, the learned counsel for the second respondent.

5. It is 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.

6. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in CrI.A.No.1572 of 2019 dated 17.10.2019 in the case of 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."

7. Further the Hon'ble Supreme Court of India also held in the order dated 02.12.2019 in CrI.A.No.1817 of 2019 in the case of M.Jayanthi Vs. K.R.Meenakshi & anr, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are 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 PRC.No.7 of 2015 in Crime No.3 of 2013 on the file of the Judicial Magistrate No.3, Thirupathur, Vellore District. However, the petitioners are at liberty to raise all the grounds before the trial Court. Further, the personal appearance of the second petitioner is dispensed with and he shall be represented by a counsel after filing appropriate application. However, the second petitioner 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.

8. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (ADI (MDU))

//True copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.3,
Thirupathur, Vellore District

2.The Inspector of Police,
Alangayam Police Station,
Vellore District

3.The Public Prosecutor,
Madras High Court

+1cc to Mr.S.Ramajayam, Advocate SR.No.23141

CrI.O.P.No.19990 of 2016

SAI (CO)
GMY (18/06/2020)