

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.07.2020

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THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.7078 of 2018
and
Crl.M.P.Nos.3657 and 3658 of 2018

G.Durai

... Petitioner/A-3

Vs

The State represented by
The Inspector of Police
Harur Police Station
Dharmapuri District.

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to SC No.133 of 2017 on the file of the learned Additional District Sessions Judge, Dharmapuri and quash the same as against A3/Petitioner.

For Petitioner : M/s.B/Gopalakrishnan

For Respondent : Mr.K.Prabakar
Additional Public Prosecutor

ORDER

This petition has been filed to quash the proceedings in S.C. No.133 of 2017 on the file of the learned Additional District Sessions Judge, Dharmapuri as against A3/Petitioner.

2. Learned counsel for the petitioner would submit that one Asokan lodged a complaint to the respondent police alleging that he was informed on 06.03.2017 at early morning 1'0 clock that his younger brother, namely, Prakasam, who was working as Clerk in Primary Agricultural Cooperative Bank at Veerappanaickanpatti, got head injury and fell down in the portico of his newly constructed house and thereafter, he and others admitted the injured Prakasam in the Government Hospital, Harur. Based on the said complaint the respondent police originally registered a case under Section 307 IPC in Crime

No.118 of 2017 dated 06.03.2017 against one Krishnan. Subsequently, the injured Prakasam died and therefore, FIR was altered under Sections 302, 201, 506(ii) and 34 of IPC. In the altered FIR, the respondent, with bad intention to revenge the petitioner for previous enmity between the petitioner's family and the concerned Deputy Superintendent of Police, implicated the petitioner as an accused (A3) without any material evidence to conclude that the the petitioner is involved in the alleged offence. One Elango, President of the Primary Agricultural Cooperative Bank at Veerappanaickanpatti and one Saranya, Sales Woman of the said society and one Kaviarasan, neighbour land owner of the deceased and some other persons have previous enmity with the deceased. On reading of all the materials, records and 161 statements in the final report, there is no role or overt act against the petitioner/A3. There is no material or eye witness to show that the petitioner is involved in the alleged offence. On the fault of the investigation conducted by the respondent police, the real fact not come out in the light. There is no interlink or cogent evidence between the witnesses and materials, place and time of occurrence, since the entire final report is based on the circumstantial and hearsay evidence. Hence, he prayed to quash further proceedings in SC No.133 of 2017 on the file of the learned Additional District Judge, Dharmapuri as against A3/Petitioner..

3. Heard the learned Additional Public Prosecutor appearing for the respondent.

4. 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.

5. 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."

6. 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 petitioner 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 SC No.133 of 2017 on the file of the learned Additional District Sessions Judge, Dharmapuri. The petitioner is at liberty to raise all the grounds before the trial Court. Considering that the SC is of the year 2017, the trial Court is directed to complete the trial within a period of six months from the date of receipt of a copy of this order.

8. Accordingly, the Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge,
Dharmapuri .

2. The Inspector of Police
Harur Police Station
Dharmapuri District.
3. The Public Prosecutor,
High Court, Madras.

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and
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BS (CO)
CB (23/09/2020)



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