

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No. 3776 of 2020

and

CrI.MP.No.2182 of 2020

Kalidas @ Kalidasan

...Petitioner/
Accused

Vs.

1.The State rep by
The Sub Divisional Magistrate and
Revenue Divisional Officer,
Nagapattinam- District.

2.The Inspector of Police,
Voimedu Police Station,
Nagapattinam District.

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records sequel to the order passed by the 1st respondent/ Sub Divisional Magistrate and Revenue Divisional Officer, Nagapattinam, issued in M.C.No.112 of 2019 order dated 15.10.2019 and 26.12.2019 and to quash the same.

For Petitioner : Mr.V.Krishnamoorthy
For Respondents : Mr.M.Mohammed Riyaz
Additional Public Prosecutor

O R D E R

This petition has been filed to quash the proceedings in M.C.No.112 of 2019 on the file of the Sub Divisional Magistrate and Revenue Divisional Officer, Nagapattinam, thereby taken cognizance for the offences under Section 107 r/w 11 of Cr.P.C, as against this petitioner.

2. The learned Counsel appearing for the petitioner would submit that the petitioner is an innocent person and he has not committed any offence as alleged by the prosecution. Without any base, the second respondent police registered a case for the offences under Section 107 r/w 11 of Cr.P.C, as against the petitioner and the same has been taken cognizance in M.C.No.112 of 2019 on the file of the Sub Divisional Magistrate and Revenue Divisional Officer, Nagapattinam. Hence he prayed to quash the same.

3. The learned Additional Public Prosecutor would submit that the second respondent conducted enquiry in M.C.No.112 of 2019 and filed a report before the first respondent and issued show cause notice against the petitioner under Section 107 r/w 11 of Cr.P.C.

4. Heard Mr.V.Krishnamoorthy learned counsel appearing for the petitioner and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the respondents.

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 Crl.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 Crl.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.

8. The petitioner has filed the petition challenging the summons issued by the Sub Divisional Magistrate and Revenue Divisional Officer, Nagapattinam dated 15.10.2019 and 26.12.2019, directing the petitioner to appear before the first respondent for the proceedings initiated under Section 107 r/w 11 of Cr.P.C. Admittedly, it is only a show cause notice under Section 107 r/w 11 of Cr.P.C and therefore, the interference by this Court, on the Show cause notice under Section 107 r/w 11 of Cr.P.C. nothing to do it.

9. In view of the above discussion, this Court is not inclined to quash the proceedings in M.C.No.112 of 2019 in Crime No.127 of 2019 on the file of the Sub Divisional Magistrate and Revenue Divisional Officer, Nagapattinam. Considering the age of the petitioner, the personal appearance of the petitioner is dispensed with and he shall be represented by a counsel after filing appropriate application. However, the 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. The Sub Divisional Magistrate and Revenue Divisional Officer, Nagapattinam is directed to complete the proceedings within a period of twelve months and pass orders on merits, from the date of receipt of copy of this Order.

10. Accordingly, this Criminal original petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rri

To

1. The Sub Divisional Magistrate and
Revenue Divisional Officer,
Nagapattinam- District.
2. The Inspector of Police,
Voimedu Police Station,
Nagapattinam District.
3. The Public Prosecutor,
High Court, Madras.

CRL.O.P.No. 3776 of 2020
and Crl.MP.No.2182 of 2020

NMI (CO)
RPP (22/05/2020)



WEB COPY