

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.6886 of 2018
and
Crl.M.P.Nos.3529 and 3530 of 2018

R.Senthilkumar ... Petitioner

Vs

P.Vasudevan ... Respondent

PRAYER:

Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the complaint in CC No.139 of 2012 pending on the file of learned Judicial Magistrate No.VII, Coimbatore filed under Section 200 of Cr.P.C dated 12.03.2012 and quash the same by allowing this Criminal Original Petition.

For Petitioner : M/s.R.Marudhachalamurthy

For Respondent : No appearance

ORDER

This petition has been filed to quash the complaint in CC No.139 of 2012, dated 12.03.2012 pending on the file of learned Judicial Magistrate No.VII, Coimbatore.

2. It is averred in the petition that the respondent herein has filed a private complaint as against the petitioner herein and others for the alleged offence under Sections 420, 427, 467, 468, 465, 471 and 506(ii) of IPC alleging that the respondent is the owner of a property and he leased out the same to and in favour of this petitioner and the petitioner has not paying rent properly and he came to know that the petitioner involved in criminal case and created document with the help of other accused and thereby, trying to grab the property of the respondent.

3. It is further averred that due to financial requirement, the respondent approached this petitioner and

expressed that he is going to sell the property, which is rented out to the petitioner and the petitioner also expressed his willingness to purchase the same and accordingly, there was an agreement of sale entered between them and thereafter, the petitioner, on various dates, paid Rs.4,00,000/- as advance and on 03.09.2006, the petitioner requested to receive the balance sale price of Rs.5,00,000/- and executed a sale in his favour, but the respondent threatened this petitioner and also foisted a false case against this petitioner and also removed the petitioner from his lawful possession of the property. Therefore, the petitioner filed two suits, one for the relief of injunction and another for specific performance on the strength of sale agreement and subsequently, the respondent also initiated two suits with ill intention to defeat the claim of the petitioner and all the suits are pending consideration. In such circumstances, the respondent initiated the present complaint. Hence, the petitioner prays this Court to quash the said complaint.

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 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."

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 C.C.No.139 of 2012 pending on the file of learned Judicial Magistrate No.VII, Coimbatore. The petitioner is at liberty to raise all the grounds before the trial Court. Considering that the CC is of the year 2012, the trial Court is directed to complete the trial within a period of twelve 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-III)

//True copy//

Sub Assistant Registrar

mra

To

1. The Judicial Magistrate No.VII
Coimbatore.
2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Marudhachalamurthy, Advocate SR.No.24826

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Cr1.O.P.No.6886 of 2018
and

Cr1.M.P.Nos.3529 and 3530 of 2018

RSV (CO)
GMY (03/08/2020)

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