

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 16.07.2020
CORAM
THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.6974 of 2018
and
Crl.M.P.Nos.3600 and 3601 of 2018

R.Barathidasan ... Petitioner/Accused

Vs

State represented by
Inspector of Police
Central Crime Branch
(Job Rocketing Wing) Team - VIII
Chennai - 600 008.
(Crime No.638 of 2010) ... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in CC No.173 of 2017 on the file of the learned Judicial Magistrate No.I, Poonamallee, Chennai, Thiruvallur District and quash the same.

For Petitioner : (No appearance)

For Respondent : Mr.K.Prabakar
Additional Public Prosecutor

ORDER

This petition has been filed to quash the proceedings in CC No.173 of 2017 on the file of the learned Judicial Magistrate No.I, Poonamallee, Chennai, Thiruvallur District.

2. It is averred in the petition that a complaint was lodged by the defacto complainant Mr.Aravindan alleging that the accused/petitioner herein represented that he was issued a license by the Government Department namely, Protection of Immigration to send the workmen to abroad and he is running an ITI Namely M/s.MECA MAG 88 at Thiruvotriyur, Chennai-19, fraudulently without obtaining any license from the concerned Education Department; when the defacto complainant approached the accused for employment at abroad, the accused assured that he would arrange an appointment in a good reputed company at Singapore for a salary of Rs.25,000/- per month and as such, the accused provided training in his ITI after receiving Rs.1,95,000/- from the defacto complainant and issued forged

certificate to him and on 19.11.2003, the defacto complainant was sent to Singapore as a Welder for a company under the name and style of Washroom Marian Pvt. Ltd., and the management of that company found that the certificate submitted by the defacto complainant is a forged one and hence, he was sent back to India.

3. It is further averred in the petition that the allegations in the said complaint is baseless, false and without any incriminating materials against the petitioner and eventhough the occurrence had taken place in the year 200e, the First Information Report came to be registered on 14.12.2010, for penal provisions of 406, 415 and 420 IPC, hence there was a delay of six years in lodging a complaint and thereafter, charge sheet was filed only on 19.07.2017 and hence, there is a huge delay in filing the charge sheet, but there is no explanation from the side of the respondent regarding this 17 years long delay in filing the charge sheet. Hence, he prayed for quashing the proceedings in CC No.173 of 2017 on the file of the learned Judicial Magistrate No.I, Poonamallee, Chennai, Thiruvallur District.

4. The learned Additional Public Prosecutor would submit that there are totally eight (8) list of witnesses, in which the prosecution already examined PW.1 to PW.4 and it is posted for further evidence.

5. 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.

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. In view of the above discussion and also after commencing the trial, this Court is not inclined to quash the proceedings in CC No.173 of 2017 on the file of the learned Judicial Magistrate No.I, Poonamallee, Chennai, Thiruvallur District. The petitioner is at liberty to raise all the grounds before the trial Court. Considering that the CC 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.

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

-s/d-

सहायक न्यायाधीश
Assistant Registrar

True Copy

Sub-Assistant Registrar

mra

To

1. The Judicial Magistrate No.I,
Poonamallee, Chennai,
Thiruvallur District.

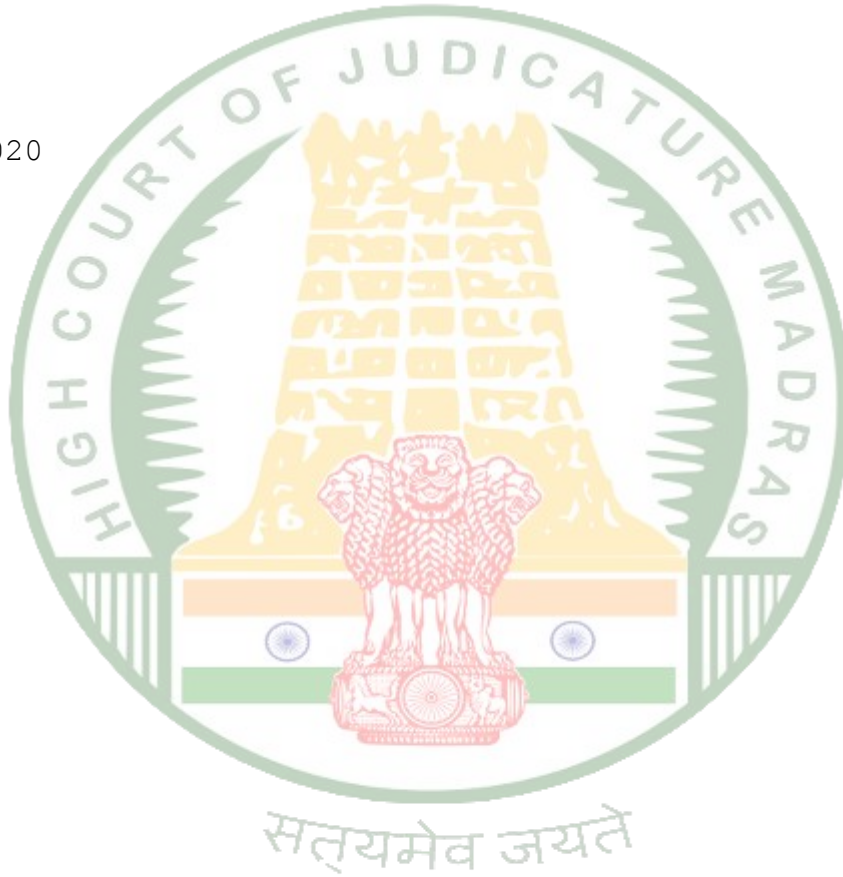
2. The Inspector of Police
Central Crime Branch
(Job Rocketing Wing) Team - VIII
Chennai - 600 008.

3. The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.6974 of 2018
and

Crl.M.P.Nos.3600 and 3601 of 2018

bs(co)
aa09/09/2020



WEB COPY