

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2020

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.13794 of 2020

and

Crl.M.P.Nos.5299 and 5300 of 2020

Vengatesan

... Petitioner/Accused

Vs.

1. The Superintendent of Police (West),
Bye Pass Road,
Villianur,
Pudhucherry.

2. The Inspector of Police,
Mangalam Police Station,
Villianur,
Pudhucherry.

3. The Sub-Inspector of Police,
Mangalam Police Station,
Villianur,
Pudhucherry.

4. Thiru.P.Periyasamy,
at present working as
Sub-Inspector of Police,
Odiansalai Police Station,
Pudhucherry.

5. Elangovan

... Respondents/Complainants,
Defacto Complainant

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to call for the records relating to the final report in C.C.No.1519 of 2019 on the file of the Judicial Magistrate No.IV, Pudhucherry (FIR in Cr.No.62 of 2018 on the file of the Mangalam Police Station) and quash the same.

For Petitioner : Mr.S.Doraisamy

For Respondents : Mr.V.Balamurugane
Additional Public Prosecutor

O R D E R

This petition has been filed to quash the proceedings in C.C.No.1519 of 2019 on the file of the Judicial Magistrate No.IV, Pudhucherry, thereby taken cognizance for the offences under Sections 294(b), 324, 506(ii) of IPC, in Crime No.62 of 2018, as against this petitioner.

2. The learned Counsel appearing for the petitioner would submit that the petitioner is innocent and they have not committed any offence as alleged by the prosecution. Without any base, the second respondent police registered a case in Crime No.62 of 2018 for the offences under Sections 294(b), 324, 506(ii) of IPC, as against this petitioner and the same has been taken cognizance in C.C.No.1519 of 2019 in Crime No.62 of 2018 on the file of the Judicial Magistrate No.IV, Pudhucherry. Hence, he prayed to quash the same.

3. Per contra, the learned Additional Public Prosecutor submitted that the 1st respondent monitored the investigation done by the 2nd respondent and the offence registered under Section 294(b), 324 and 506(ii) of IPC. He would further submit that the 2nd respondent is competent authority to investigate the crime and complete the investigation and to file a final report. The learned Additional Public Prosecutor would further submit that the trial has been commenced and some of the witnesses have been examined in this case.

4. Heard Mr.S.Doraisamy, learned counsel for the petitioner and Mr.V.Balamurugane, learned Additional Public Prosecutor appearing for the respondents.

5. The learned counsel for the petitioner raised specific ground that while challenging the F.I.R., before this Court by the same petitioner in Crl.O.P.No.23438 of 2018, this Court, by order dated 04.10.2018, specifically directed the Superintendent of Police in-charge of Mangalam Police Station i.e., first respondent herein to monitor the investigation in Crime No.62 of 2018 done by the 2nd respondent. During the course of investigation, it is found that the petitioner was not involved in any offence. It is needless to state that further action against the petitioner should be dropped in crime No.62 of 2018. However, instead of the second respondent, the third respondent only completed the investigation and filed final report. Though this Court specifically directed the 2nd respondent to conduct the investigation, the third respondent completed the investigation and filed final report and the same has been taken cognizance in C.C.No.1519 of 2019 on the file of the learned Judicial Magistrate No.IV, Puducherry. The learned counsel raised further ground that absolutely there is no evidence to show that the 1st respondent monitored the first respondent investigation done by the third respondent.

6. Though this Court specifically directed the second respondent to conduct investigation, the third respondent filed final report, since he is the competent person. According to the learned Additional Public Prosecutor, the first respondent monitored the investigation done by the second respondent. However, these grounds cannot be considered to quash the final report. Further, the petitioner is at liberty to take appropriate action as against the respondent for the disobedience of the order passed by this Court in the manner known to law if so advised.

7. 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.

8. 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."

9. 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.

10. In view of the above, this court is not inclined to quash the proceedings in C.C.No.1519 of 2019 in crime No.62 of 2018 on the file of the learned Judicial Magistrate No.IV,

Puducherry. However, the trial Court is directed to complete the trial within a period of Six months from the date of receipt of copy of this Order.

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

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

ssn

To

1. The Judicial Magistrate No.IV,
Pudhucherry.
2. do Through The Chief Judicial Magistrate,
Pudhucherry.
3. The Superintendent of Police (West),
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4. The Inspector of Police,
Mangalam Police Station,
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6. Thiru.P.Periyasamy,
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Odiansalai Police Station, Pudhucherry.
7. The Public Prosecutor,
Pudhucherry.

+1cc to Government Pleader SR.No.29097

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NMI (CO)
GMY (19/10/2020)

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