

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.15502 of 2020

and

Crl.M.P.Nos.5909 & 5910 of 2020

1. Arivazhagan, M/A 43 years
S/o.Narayanan
 2. Krishnanan, M/A 35 years,
S/o.Madhu
 3. Raji, M/A 63 years,
S/o.Manickam
 4. Rathinavel, M/A 30 years,
S/o.Govindasamy
 5. Vijayakumar, M/A 35 years,
S/o.Mayilsamy
 6. Shanmugam @ Chinnu, M/A 65 years,
S/o.Manickam
 7. Vetrivel, M/A 32 years,
S/o.Govindasamy
 8. Govindasamy, M/A 60 years,
S/o.Late Manickam
 9. Chinnadurai, M/A 47 years,
S/o.Govindan
 - 10.Samidurai, M/A 32 years,
S/o.Easan
 - 11.Sakthivel @ Saminathan, M/A 35 years,
S/o.Easan
- ...Petitioners

Vs.

1. The State by
Inspector of Police,
Mecheri Police Station,
Mecheri, Mettur Taluk,
Salem District - 636 453.(Crime No.246 of 2019)

2. Krishnamoorthy,
S/o.Sampath

...Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records of the final report in PRC.No.36 of 2019 on the file of Learned Judicial Magistrate No.II, Mettur Dam, Salem District and quash the same.

For Petitioners: Mr.M.R.Jothimanian
For R1 : Mr.S.Karthikeyan
Additional Public Prosecutor

ORDER

This petition has been filed to call for the records of the final report in P.R.C.No.36 of 2019 on the file of learned Judicial Magistrate No.II, Mettur Dam, Salem District and quash the same.

2.The learned counsel appearing for the petitioners submitted that the Division Bench of this Court, by an order dated 21.08.2019 in H.C.P. No.1130 of 2019 directed one Manonmani, Sub-Inspector of Police not to investigate the matter. Further, the 4th accused also filed petition before this Court in Crl. OP. No.7021 of 2020 for transfer of investigation in respect of Crime No.235 of 2019 from the file of the 1st respondent to the file of CBCID for further investigation and the same was ordered by this Court vide order dated 30.07.2020. Therefore, with malafide intention, the 1st respondent registered the case as against the petitioners in Crime No.246 of 2019. He further submitted that for the very same occurrence dated 03.06.2019, the petitioners are aggrieved persons and they sustained grievous injuries and as such they lodged a complaint and on receipt of the same, the 1st respondent registered the FIR in Crime No.247 of 2019 for the offences punishable under Sections 294(b), 323, 324 and 506(2) of IPC as against the 2nd respondent and two others. The 1st respondent without following the procedure under the PSO 588(A), mechanically filed the final report only in Crime No.246 of 2019 lodged by the 2nd respondent herein. The FIR registered on the complaint lodged by the petitioners is now kept in cold storage and it is still pending for investigation. Therefore, he sought for quashment of the entire proceedings.

3.Per Contra, the learned Additional Public Prosecutor submitted that there are specific overt act as against each petitioners in respect of the Crime No.246 of 2019. In fact, the injured persons sustained grievous injuries on their leg and as

such the major offences under Section 307 has been registered as against the petitioners. He further submitted that the present complaint is no way connected with the earlier FIR registered in Crime No.235 of 2019 on the complaint lodged by the mother of the 4th petitioner herein. Though, the investigation has been transferred in Crime No.235 of 2019 on the file of the 1st respondent to CBCID, it is nothing to do with the present case. Therefore, he prayed for dismissal of the quash petition.

4. Heard the learned counsel appearing for the petitioners as well as the learned Additional Public Prosecutor appearing for the 1st respondent.

5. On a perusal of the charge sheet and also the statements recorded under Section 161 of Cr.P.C. On 03.06.2019, there was quarrel between the petitioners group and the 2nd respondent's group in which the 2nd respondent and others sustained grievous injuries. On the said occurrence, the petitioners as well as the 2nd respondent lodged complaint and both were registered in Crime Nos.246 and 247 of 2019. After completion of the investigation, the 1st respondent filed final report only in respect of the Crime No.246 of 2019 for the offences punishable under Sections 147, 148, 341, 294(b), 323, 324, 307 and 506 (ii) of IPC as against the petitioners in which the petitioners arrayed as A1 to A11. Each petitioner has specific overt act against the 2nd respondent. Further, the Crime No.235 of 2019 was registered for the occurrence for the different set of allegations as against the accused persons. Therefore, the said Crime is no way connected with the present case since the occurrence was taken place on 03.06.2019.

6. 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.

7. 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."

8. 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 petitioners cannot be considered by this Court under Section 482 Cr.P.C.

9. In view of the above discussion, this Court is not inclined to quash the proceedings in PRC No.36 of 2019 on the file of the learned Judicial Magistrate No.II, Mettur Dam, Salem District. The petitioners are at liberty to raise all the grounds before the trial Court. Considering the age of the petitioners, the personal appearance of the petitioners 3, 6 and 8 are dispensed with and they shall be represented by a counsel after filing appropriate application. However, the petitioners 3, 6 and 8 shall be present before the Court at the time of furnishing of copies, framing of charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment. The trial Court is directed to complete the trial within a period of twelve months from the date of receipt of copy of this Order.

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

सत्यमेव जयते

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

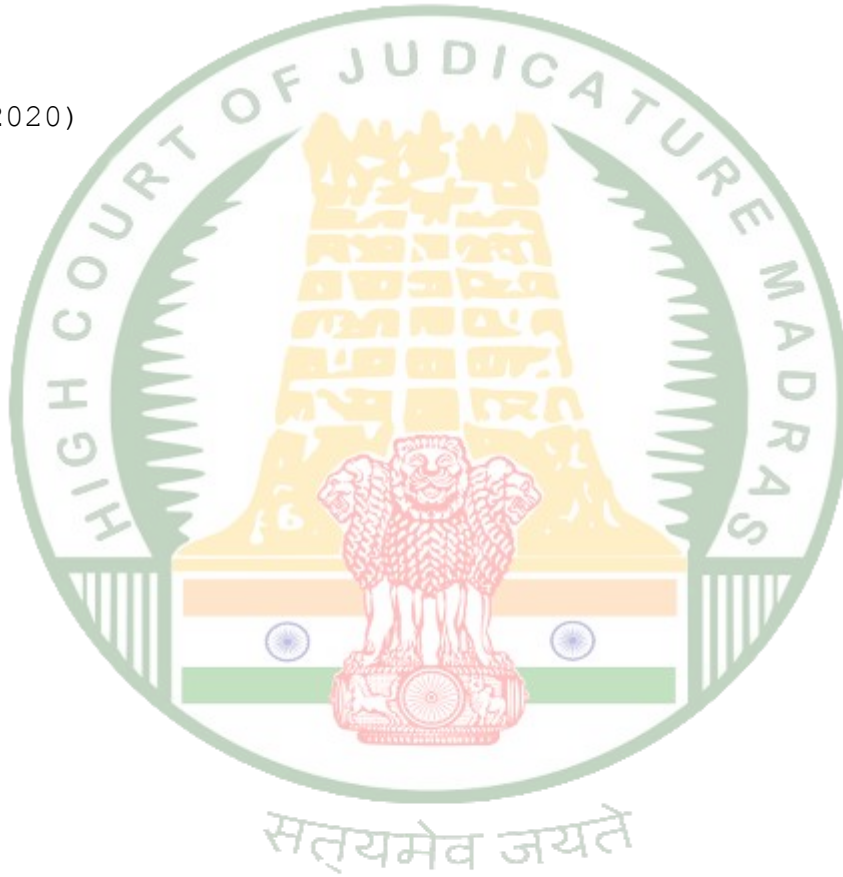
1. The Judicial Magistrate-II, Mettur Dam, Salem Dist.
2. Do-Thro The Chief Judicial Magistrate, Salem Dist.

3. The Inspector of Police,
Mecheri Police Station,
Mecheri, Mettur Taluk,
Salem District - 636 453.

4. The Public Prosecutor,
High Court, Madras.

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and
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