

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.7183 of 2017

Ramasamy @ Auto Manickam
S/o.Pachiappa Udayar,
Voikkal Pattarai,
Allikuttai, Salem.

...Petitioner/Accused No.1

Vs.

1.State represented by the
Inspector of Police,
Land Grabbing & Prevention,
Special Division,Salem District,
Crime No.16 of 2011. ... 1st Respondent/Complainant

2.Subramanian
S/o.Andigounder,
residing at Kaattu Valavu,
Thailanoor Village,
Pallipatti Post, Salem Taluk and District.
... 2nd Respondent/Defacto
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in C.C.No.109 of 2012 on the file of the Judicial Magistrate No.IV, Salem (Special Court for Land Grabbing Cases, Magistrate Level, Salem) and quash the same.

For Petitioner : No appearance

For Respondents : Mr.S.Karthikeyan
Additional Public Prosecutor for R1
Mr.V.Sekar for R2

O R D E R

This petition has been filed to quash the proceedings in C.C.No.109 of 2012 on the file of the learned Judicial Magistrate No.IV, (Special Court for Land Grabbing Cases, Magistrate Level), Salem, thereby, taken cognizance for the offences under Sections 120(b), 447, 468, 471, 427, 387, 506(I)

IPC and Section 420 IPC in Crime No.16 of 2011, as against this petitioner.

2.The Additional Public Prosecutor submitted that now the trial is pending before the learned Judicial Magistrate-IV (Special Court for Land Grabbing Cases, Magistrate Level), Salem in C.C.No.109 of 2012. He has further submitted that since the very constitution of the Special Court is before the Hon'ble Supreme Court, the prosecution could not able to proceed with the trial.

3.There is no representation for the petitioner. Heard Mr.S.Karthikeyan, learned Additional Public Prosecutor for the 1st respondent and Mr.V.Sekar, learned counsel for the 2nd respondent.

4. 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.

5. 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."

6. 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.

7.Considering the above facts and circumstances, the entire case in C.C.No.109 of 2012, is hereby withdrawn from the file of the learned Judicial Magistrate-IV (Special Court for Land Grabbing Cases, Magistrate Level), Salem and transferred the same to the file of the learned Judicial Magistrate-VI, Salem, is being the jurisdictional Court for the respondent, forthwith. On receipt of the same, the learned Judicial Magistrate-VI, Salem is directed to complete the trial within a period of six months from the date of receipt of the bundle.

8.In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.109 of 2012 in Crime No.16 of 2011 on the file of the Judicial Magistrate No.IV, (Special Court for Land Grabbing Cases, Magistrate Level), Salem. The petitioner is at liberty to raise all the grounds before the trial Court.

9.With the above direction, this Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.IV,
(Special Court for Land Grabbing Cases, Magistrate Level)
Salem.

2.The Judicial Magistrate VI, Salem.

3.The Inspector of Police,
Land Grabbing & Prevention,
Special Division, Salem District.

4.The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No.7183 of 2017

MR(CO)

RMP(29/09/2020)