

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.23568 of 2019
& Crl.M.P.Nos.12403 and 12405 of 2019

Muthamizh
S/o Muthukrishnan
No.258, Mariamman Koil Street
Kappur Post, Villupuram ... Petitioner/Accused -17

Vs.

1.State Rep by
The Inspector of Police
Thiruvennai Nallur Police Station
Villupuram District.
Cr.No.320/2014.

2.Chandran
Sub-Inspector of Police
Thiruvennai Nallur Police Station
Villupuram District. ... Respondents/Complainant
& Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 439 of Criminal Procedure Code, to call for the records in connection with S.C.No.180 of 2015 on the file of the Subordinate Judge, Ulundurpet and quash the same.

For Petitioner : Mr.S.Saravanakumar

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

No Appearance for R2

ORDER

The Criminal Original Petition has been filed to call for the records in connection with S.C.No.180 of 2015 on the file of the Subordinate Judge, Ulundurpet and quash the same.

2.The learned counsel for the petitioner would submit that the defacto complainant belongs to the same police station, who is working as a Sub-Inspector of Police. Therefore, in the police station the Inspector of Police, on

the complaint lodged by the Sub-Inspector of Police/Defacto complainant registered the case as against the petitioner. Further, he would submit that both the Investigating Officer as well as the defacto complainant are belongs to the same police station. Even as per the evidence of the defacto complainant it is bald and vague, in so far as the petitioner is concerned. Hence he prayed to quash the S.C.No.180 of 2015 on the file of the Subordinate Judge, Ulundurpet.

3.Per contra, the learned Additional Public Prosecutor would submit the Sub-Inspector of Police being the Defacto complainant lodged the complaint. The same was registered by the Inspector of Police and the investigation was done by another Inspector of Police. Now, trial has been commenced and prosecution have examined P.W.1 and posted for further evidence. Therefore, the prayer as such sought for by the petitioner cannot be considered.

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. Therefore this Court is not inclined to entertain this petition.

7. Accordingly, the Criminal Original Petition stands dismissed.

8. Personal appearance of the petitioner before the trial Court is dispensed with and 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. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge, Ulundurpet.

2. The Inspector of Police
Thiruvennai Nallur Police Station
Villupuram District.

3. The Additional Public Prosecutor
High Court of Madras.

+1cc to Mr.S.Saravanakumar, Advocate SR.30983

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CrI.O.P.No.23568 of 2019

SK(CO)

CB(25/09/2020)

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