

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.23580 of 2019
& Crl.M.P.No.12413 of 2019

S.Suresh
S/o Selvaraj
Govindaraj Store
No.42, Devangar Middle Street
Jayankondam, Ariyalur District. Petitioner

Vs.

1.The Inspector of Police
All Women Police Station
Jayankondam
Ariyalur District.

2.D.Abirami
D/o Desinguraj
91-E, West Street, Vethiyarvattu
Udayarpalayam PO & Taluk
Ariyalur District. Respondents

PRAYER: Criminal Original Petition filed under Section 439 of Criminal Procedure Code, to call for the records culminated in the final report in Special S.C.No.40 of 2018 on the file of Mahila Court, Ariyalur to quash the same as illegal, void abinito as against the petitioner.

For Petitioner : Mr.E.C.Ramesh

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

Mr.M.Kavikannan for R2

ORDER

petition has been filed to quash the proceedings in C.C.No.40 of 2018 on the file of the Mahila Court, Ariyalur, thereby taken cognizance for the offences under Sections 8, 17 of the POCSO Act and Sections 9, 10 of the Prohibition of Child Marriage Act, in Crime No.12 of 2018, as against this petitioner.

2. The learned Counsel appearing for the petitioner would submit that the petitioner is innocent and he has not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.12 of 2018 for the offences under Sections 8, 17 of the POCSO Act and Sections 9, 10 of the Prohibition of Child Marriage Act, as against the petitioner and the same has been taken cognizance in C.C.No. 40 of 2018 on the file of the Mahila Court, Ariyalur. Further the learned counsel for the petitioner raised a ground to quash the proceedings, that the petitioner is suffering from moderate mental retardation and his IQ level is 40%. Therefore, the petitioner ought not to have committed the offence as alleged by the prosecution. Hence he prayed to quash the same.

3. The learned Additional Public Prosecutor would submit that the trial has been commenced and some of the witnesses have been examined in this case.

4. Heard Mr.E.C.Ramesh, learned counsel appearing for the petitioner and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the first respondent.

5. 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.

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, this Court is not inclined to quash the proceedings in C.C.No.40 of 2018 in Crime No.12 of 2018 on the file of the Mahila Court, Ariyalur. Further, the ground raised by the petitioner that he is suffering from moderate mental retardation and having IQ level of 40% can be considered before the trial Court through proper evidence. Therefore it cannot be considered by this Court, that too under Section 482 Cr.P.C., for quashing the proceedings. The petitioner is at liberty to raise all other grounds before the trial Court. Therefore the Criminal Original Petition is dismissed. However, 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, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is also closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Mahila Court
Ariyalur.

2.The Inspector of Police
All Women Police Station
Jayankondam
Ariyalur District.

3.The Additional Public Prosecutor
High Court of Madras.

Cr1.O.P.No.23580 of 2019

KS(CO)
SP(03/09/2020)