

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.06.2020
CORAM:

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

Crl.O.P. No.21931 of 2017
and
Crl.MP.No.12868 of 2017

A.M.Mohan ... Petitioner
Versus

State rep.by
Inspector of police,
Chengalpattu Taluk Police Station,
Chengalpattu Town & Taluk,
Kancheepuram District. ... Respondent

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to call for the charge sheet records in PRC.No.3 of 2016 on the file of the Judicial Magistrate No.II, Chengalpattu and quash the charges in so far as the petitioner herein is concerned.

For Petitioner : No Appearance
For Respondent : Mr.M. Mohamed Riyaz,
Additional Public Prosecutor.

O R D E R

This petition has been filed to quash the proceedings in PRC.No.3 of 2016 pending on the file of the Judicial Magistrate No.II, Chengalpattu District, taking cognizance for the offences under Sections 120(b), 147, 148, 302, 149 and 114 of IPC., in Crime No.96 of 2010 in CCB. Subsequently, the case was taken up for investigation by CBCID in Crime No.4 of 2014 as against this petitioner.

2.The case of the prosecution is the deceased/Abinешababu was running a real estate business in the name and style of " Al Triven Steels Ltd.," in Chennai. The deceased was a real estate baron. The petitioner herein acted as a mediator in the said concern. One Sundarambal had sold some property to the said concern and paid the amount by way of demand draft for a sum of Rs.2,40,00,000/-. According to the deceased, the petitioner herein encashed the same with the assistance of his sister by name Senthamarai, who impersonated the purchaser Sundarambal, hence the deceased gave a complaint based on which a case was registered against the petitioner and his associates in Crime No. 4 of 2004 on the file of CBCID, Chennai. Enraged by the same, the petitioner entered into a criminal conspiracy along with the other accused and caused the death of the deceased.

3. According to the petitioner, there is no evidence to show that he has committed the alleged offence. Further, he had not given any confession statement to the investigating officer, as alleged. Therefore, the charge sheet laid by the respondent against him is liable to be quashed. Hence, the petitioner is constrained to file this petition.

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

5. Heard Mr. M. Mohamed Riyaz, learned Additional Public Prosecutor appearing for the respondent.

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 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."

8. 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.

9. In view of the above discussion, this Court is not inclined to quash the proceedings in PRC.No.3 of 2016 pending on the file of the Judicial Magistrate No.II, Chengalpattu District. The petitioner is at liberty to raise all the grounds before the Trial Court. Further, 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.

10. Accordingly, this criminal original petition is dismissed on merits. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

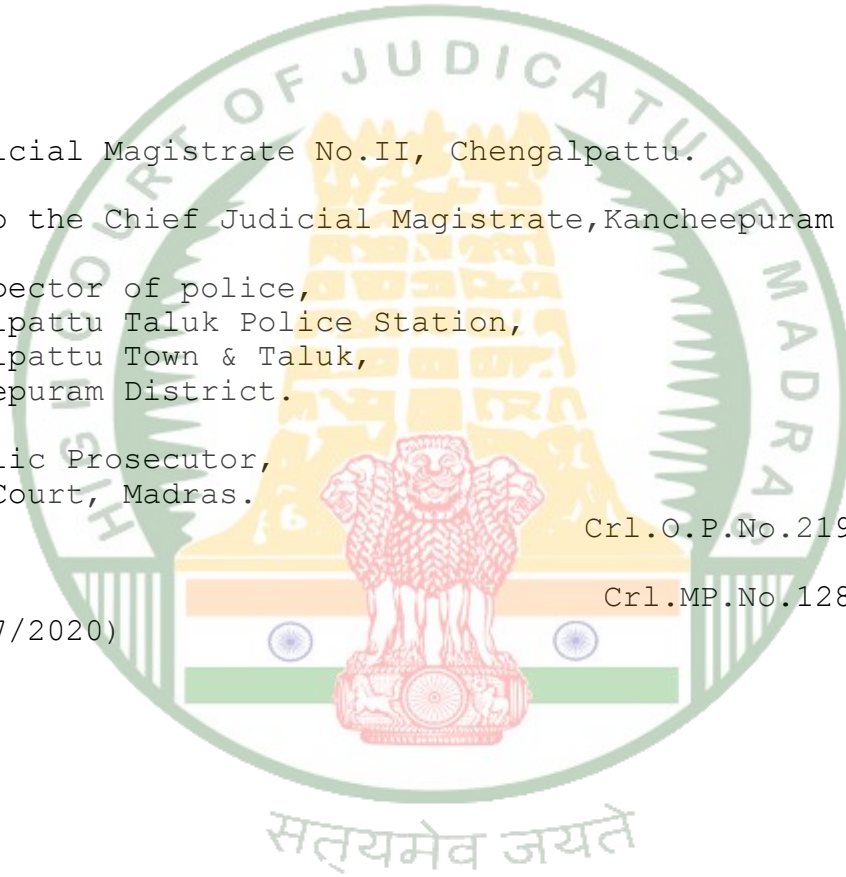
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To

1. The Judicial Magistrate No. II, Chengalpattu.
2. Do thro the Chief Judicial Magistrate, Kancheepuram District.
3. The Inspector of police,
Chengalpattu Taluk Police Station,
Chengalpattu Town & Taluk,
Kancheepuram District.
4. The Public Prosecutor,
High Court, Madras.

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A.SK(28/07/2020)



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