IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.06.2020

CORAM

THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.18410 of 2017
and
Crl.MP.No.11228 of 2017

1.Vivek
2.Balaji
3.Manikandan
4.Govindasamy
5.Seenivasan
6.Vijayakumar
7.Kuppusamy
8.Sankar ... Petitioners/Accused 3 to 6, 8 to 10

Versus

1.The State rep.by
The Sub-Inspector of Police,
Tharamangalam Police Station,
Omalur Taluk, Salem District.
(Crime No.201 of 2017) ...1st Respondent/Complainant

2.The Village Administrative Officer,
Karukkalvadi Village,
Omalur Taluk, Salem District.
...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the proceeding in C.C.No.64 of 2017 on the file of the Judicial Magistrate, Omalur and quash the same.

For Petitioners: No Appearance

For Respondents: Mr.M.Mohamed Riyaz,
Additional Public Prosecutor.

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ORDER

This petition has been filed to quash the proceedings in C.C.No.64 of 2017 on the file of the Judicial Magistrate, Omalur taking cognizance for the offences under Sections 143, 147, 188, 283, 341, 353 and 506(i) of I.P.C., in Crime No.201 of 2017, as against these petitioners/A1, A3 to A6, A8 to A10.

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2.The case of the prosecution is that the de-facto complainant is the Village Administrative Officer of Karukkalvadi Village. He lodged a complaint stating that while he went to open a TASMAC shop in the said Village, the above mentioned petitioners had opposed to open the shop. Due to their protest, they caused public nuisance. A case was registered as against these petitioner for the offence under Sections 143, 147, 188, 283, 341, 353 and 506 (i) of I.P.C., in Crime No.201 of 2017 based on the complaint given by the de-facto complainant. Hence, the petitioners filed this petition and prayed to quash the same.

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

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

5.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.

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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 Invstigation 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

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> 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.64 of 2017 on the file of the Judicial Magistrate, Omalur. The petitioners are at liberty to raise all the grounds before the trial Court. The trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this Order.

9.Accordingly, this criminal original petition is dismissed on the facts of the case. Consequently, the connected miscellaneous petitions is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1.The Sub-Inspector of Police,
Tharamangalam Police Station,
Omalur Taluk, Salem District.

2.The Village Administrative Officer,
Karukkalvadi Village,
Omalur Taluk, Salem District.

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3.The Judicial Magistrate,
Omalur.

4.The Public Prosecutor,
High Court, Madras.

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and
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PVS(CO)
CB(06/08/2020)

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