

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2020

CORAM

THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No. 28690 of 2017

and

Crl.M.P.Nos.16235 & 16236 of 2017

R.Balamurugan

... Petitioner

Vs.

1.N.Muthamizh Selvi

2.M.Ramar

3.R.Jayalakshmi

4.Dr.R.Hemalatha

... Respondents

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records pertaining to M.C.No.6 of 2014 now renumbered as DVC.No.47 of 2017, on the file of the learned XVI Metropolitan Magistrate Court, George Town, Chennai - 600 001 and to quash the same in so far as the petitioner concerned.

For Petitioner : Mr.Aravind

For R1 : Mr.G.Dhayashankar

For R2 to R4 : No appearance

ORDER

This Criminal Original Petition has been filed to quash the proceedings in DVC.No.47 of 2017, pending on the file of the learned XVI Metropolitan Magistrate Court, George Town, Chennai - 600 001.

2 The petitioner is the husband of the first respondent and the marriage between R.Balamurugan and the first respondent Viz.,N.Muthamizh Selvi was solemnized on 09.07.2009. Thereafter, due to matrimonial disputes the first respondent and her husband were living separately. Under this circumstance, the first respondent herein filed a petition under Domestic Violence Act in D.V.C.No.47 of 2017 on the file of the learned XVI Metropolitan Magistrate Court, George Town, Chennai - 600 001. The said D.V.C.No 47 of 2017 is pending for trial.

3 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.

4 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."

5 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.

6 In view of the above, this Court is not inclined to quash the proceedings in DVC.No.47 of 2017, on the file of the learned XVI Metropolitan Magistrate Court, George Town, Chennai - 600 001. Accordingly, this Criminal Original Petition stands dismissed. However, the petitioner is at liberty to produce all the orders passed as against the first respondent/complainant before the Trial Court during the Trial. Further, the Trial Court is directed to complete the trial in DVC.No.47 of 2017, within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1.The XVI Metropolitan Magistrate Court,
George Town,
Chennai - 600 001.

2.The Chief Judicial Magistrate,
Egmore, Chennai.

+1 cc to Mr.M.Aravind, Advocate,sr.22455

+1 cc to Mr.CV.Kumar, Advocate,sr.22269

gj(co)
krd 5/11

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