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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.03.2020

CORAM

THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No. 34329 of 2019
and
Crl.M.P.No. 18993 of 2019

D.Gunasekaran
Village Assistant ... Petitioner/Accused No.1

Vs

1. State rep. by Inspector of Police,
K.V. Kuppam Police Station,
Crime No. 18 of 2014,
Vellore District.

2. K.Raja,
S/o.Kannan,
Village Administrative Officer,
Nagal Village,
Katpadi Taluk,
Vellore District.

... Respondents

(R2-Impleaded as per order dated 21.02.2020
in Crl.M.P.No. 1759 of 2020)

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records relating to the charge sheet in C.C.No. 95 of 2019 on the file of the learned Judicial Magistrate, Katpadi and quash the same by allowing this Criminal Original Petition.

For Petitioner : Mr.N.Manoharan

For first Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This petition has been filed to quash the proceedings in C.C.No. 95 of 2019 on the file of the learned Judicial

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Magistrate Court, Katpadi, thereby taken cognizance for the offences under Sections 409 & 411 of IPC, in Crime No.18 of 2014, 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.18 of 2014 for the offences under Sections 409 & 411 of IPC, as against the petitioner and the same has been taken cognizance in C.C.No. 95 of 2019 on the file of the learned Judicial Magistrate Court, Katpadi. 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.N.Manoharan, learned counsel appearing for the petitioner and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the respondents.

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 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.
>
> ....

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> 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.95 of 2019 in Crime No.18 of 2014 on the file of the learned Judicial Magistrate, Katpadi. The petitioner is at liberty to raise all the grounds before the trial Court.

9. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
   K.V. Kuppam Police Station,
   Crime No. 18 of 2014,
   Vellore District.

2. The Judicial Magistrate,
   Katpadi.

+1cc to Mr.N.Manokaran, Advocate Sr.21347

Crl.O.P.No. 34329 of 2019

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srg 15/07/2020

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