



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.11.2020

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P. (MD)Nos.17899 and 18439 of 2016

and

Crl.M.P. (MD)Nos.8916 and 9186 of 2016

1.K.Chinna Muniasamy

2.R.Muniasamy

3.M.P.Pandian

4.S.Muniasamy

5.M.Dharmalingam

... Petitioners / Accused Nos.1 to 5 in
Crl.O.P(MD)No.17899 of 2016

R.Sivaraj

... Petitioner / 6th respondent in
Crl.O.P(MD)No.18439 of 2016

Vs.

Muniammal

... Respondent /Complainant in
both Crl.OPs.

Common Prayer: Criminal Original petitions filed under Section 482 of Code of Criminal Procedure, to call for records in C.C.No.89 of 2016 on the file of the Judicial Magistrate, Mudukulathur and quash the same.

In Both Petitions:

For Petitioners

: Mr.K.Kumaravel

For Respondent

: Mr.S.Muthumalai Raja

COMMON ORDER

These petitions are filed to quash proceedings in C.C.No.89 of 2016 on the file of the Judicial Magistrate, Mudukulathur, as against the petitioners.

2.It is averred that the respondent has lodged a complaint before the concerned jurisdiction police namely the Inspector of Police, Anti Land Grabbing Special Cell, on various occasions and all the complaints were duly enquired and the same were closed as no prima facie case is made out. Again the respondent has filed a complaint and also approached this Court and this Court directed the police to register the case if any prima facie case is made out. The respondent police enquired the complaint and closed the same as civil in nature. At this juncture, again the respondent has filed a private complaint and the same was taken cognizance in C.C.No.89 of 2016 without considering the above circumstances. It is further



averred that there are civil dispute between the petitioners and the respondent herein in respect of subject property in O.S.No.59 of 2001 and it is pending for trial.

3.On perusal of complaint, the accused persons have forged the signature of the respondent and fabricated the documents in respect of the subject property. Though the civil case is pending, the allegations levelled as against the petitioners attract the offence as alleged by the respondent herein. Therefore, the learned Magistrate rightly had taken cognizance and issued summons to the petitioners herein.

4.In this regard, 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.

5.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."

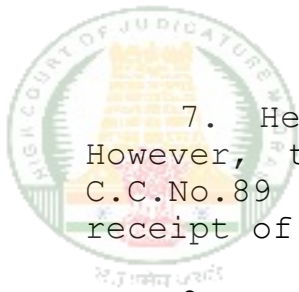
6. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** in **Cr1.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"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.



7. Hence, these Criminal Original Petitions are dismissed. However, the trial Court is directed to complete the trial in C.C.No.89 of 2016, within a period of one year from the date of receipt of a copy of the order.

8. At this juncture, the learned Counsel for the petitioners submitted that the presence of the petitioners before the Trial Court may be dispensed with.

9. Accepting the said submission, the personal appearance of the petitioners is dispensed with and they shall be represented by a counsel after filing appropriate application. The petitioners shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment.

10. Accordingly, these Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vsd

To

1.The Judicial Magistrate,
Mudukulathur

2.The Chief Judicial Magistrate,
Ramanathapuram District.

Copy to: The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2)

Crl.O.P. (MD)Nos.17899 and 18439 of 2016
and
Crl.M.P. (MD)Nos.8916 and 9186 of 2016
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