



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.12.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No.21302 of 2016

and

Crl.M.P. (MD) Nos.10925 & 10926 of 2016

WEB COPY

1.David Muthaiah

2.Mariyam

... Petitioners/Accused 1 & 2

Vs

1.The Inspector of Police,
Cheranmahadevi Police Station,
Cheranmahadevi,
Tirunelveli District.
(Crime No.393 of 2012)

... 1st Respondent/Complainant

2.Kovilpillai Ammal

... 2nd Respondents/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records in P.R.C.No. 42 of 2016 on the file of the learned Judicial Magistrate, Cheranmahadevi, Tirunelveli district, and Quash the proceedings as against the petitioner.

For Petitioners : Mr.A.Thiruvadikumar

For Respondents : Mr.K.R.Bharathi Kannan
Government Advocate (crl.side) for R1

: Mr.D.Venkatesh for R2

O R D E R

This petition has been filed to quash the proceedings in P.R.C.No. 42 of 2016 on the file of the learned Judicial Magistrate, Cheranmahadevi, Tirunelveli district.

2. The learned Counsel appearing for the petitioners would submit that the petitioners are innocent persons and they have not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.393 of 2012, as against the petitioner and filed charge sheet in P.R.C. No. 42 of 2016 on the file of the learned Judicial Magistrate, Cheranmahadevi, Tirunelveli district. Hence he prayed to quash the same.

3. The learned Government Advocate (criminal side) would submit that there are specific allegations as against the petitioners. He further submitted that committal proceedings over and take cognizance in P.R.C. No. 42 of 2016 on the file of the learned



Judicial Magistrate, Cheranmahadevi, Tirunelveli District and it is pending for trial in this case and all the points raised by the petitioner have to be considered only during the trial. Therefore, he prayed to dismiss this petition.

4. Heard the learned counsel for the petitioners, the learned Government Advocate (criminal side) for the first respondent and the learned counsel for the second respondent.

5. It is seen from the charge there are specific averments to attract the offences as against the petitioners. Further it is also seen that there are materials to connect the petitioners to the offences. More over all the points raised by the petitioners have to be considered only during the trial. The petitioners are at liberty to raise all the points before the Court below during the trial. 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.

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.

.....

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 P.R.C.No.42 of 2016. However,
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considering the case is of the year 2016, the learned Judicial Magistrate, Cheranmahadevi, Tirunelveli district, is directed to complete the proceedings in in P.R.C. No. 42 of 2016 within a period of six months from the date of receipt of copy of this Order.

9. In view of the above discussions, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are also dismissed.

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

11. 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.

Sd/-

Assistant Registrar(AD-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Ls

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Judicial Magistrate,
Cheranmahadevi, Tirunelveli district.

2. The Inspector of Police,
Cheranmahadevi Police Station, Tirunelveli

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.A.THIRUVADI KUMAR, Advocate SR-23948[F]

Order made in

CRL.O.P (MD) No.21302 of 2016

03.12.2020

MJ(CO)

TR(22.12.2020) 4P 5C

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