



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 29/10/2020

PRESENT

The Hon'ble Mr. Justice **G.K. ILANTHIRAIYAN**

CRL OP(MD).No.21797 of 2016

and

Cr1.M.P(MD)Nos.11219 and 11220 of 2016

WEB COPY

1.Jainudeen

2.Raja Mohammed

...Petitioners/Accused Nos.1 & 2

Vs.

1.State Rep. by

The Inspector of Police,
Vallinokkam Police Station,
Ramnad District.

(In Crime No.2 of 2016) ...1st Respondent/Complainant

2.Velusamy

...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 or Cr.P.C. praying to call for the records in S.T.C.No.68 of 2016 on the file of the Judicial Magistrate, Muthukulathur, Ramnad District and quash the same.

For Petitioners : Mr.D.S.Haroon Rasheed

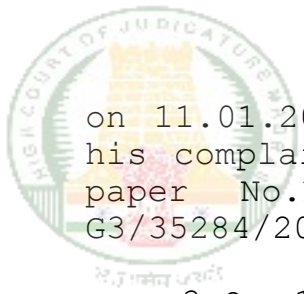
For R1 : Mr.R.Erottuchamy

Government Advocate(Cr1.Side)

O R D E R

This petition has been filed to quash the proceedings in S.T.C.No.68 of 2016 on the file of the learned Judicial Magistrate, Muthukulathur, Ramnad District, as against the petitioners.

2.The case of the prosecution is that the the defacto complainant is a Special Sub Inspector Police attached with the first respondent police station. There was a civil dispute between two parties namely Mohamed Eessaq and Panchandi for construction of compound wall in the Pallivasal premises. Both the parties lodged a complaint before the first respondent police and they have been issued CSR receipt. On that time the complaint has been closed as if they agreed to survey the land by the Revenue Authority. Subsequently, after survey of the land, one party namely Mohammed Eessaq tried to built a compound wall. On that time, other side parties opposed the same. Immediately, both the parties lodged a complaint and case has been registered in Cr.No.79 of 2015 against Panchandi and others for offences under Section 506(ii) & 427 IPC and other Crime No.80 of 2015 registered against Mohammed Eessaq and others for offences under Section 294(b) IPC. In such circumstances



on 11.01.2016 a summon has been issued to the Mohammed Eessaq for his complaint to the Superintendent of Police, Ramnad vide current paper No.N.Dis-G3/3553/2066/2015, dated 28.12.2015 and N.Dis-G3/35284/2026/15, dated 22.12.2015.

3. On 12.01.2015 at about 11.45 a.m. the said Mohammed Eessaq appeared before the first respondent police along with the 1st and 2nd petitioners. The opposition party i.e., Panjandi also appeared before the 2nd respondent / defacto complainant for enquiry. The Investigation Officer called only a two person i.e., Mohammed Eessaq and Panjandi for enquiry inside the police station. These petitioners stood outside of the police premises. On enquiry made by the second respondent, he has asked that there was a differentiate in signature in the complaint given by the Mohammed Eessaq. On that time the petitioners, who stood outside used abusive words against the second respondent/defacto complainant and deterred the public servant from discharging his duty. Hence, the complaint has been lodged and the charge has been laid against the petitioners/accused.

4. The learned Counsel appearing for the petitioners would submit that the petitioners are innocent and they have not committed any offence as alleged by the prosecution. Without any base, the case has been registered as against the petitioner for the offences under Sections 294(b) and 353 IPC., and the same has been taken cognizance in S.T.C.No.68 of 2016 on the file of the learned Judicial Magistrate, Muthukulathur, Ramnad District. Hence he prayed to quash the same.

5. Heard Mr.D.S.Haroon Rasheed, learned counsel appearing for the petitioners and Mr.R.Erottuchamy, learned Government Advocate (Crl.Side) appearing for the first respondent.

6. 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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7. 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."

8. 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.

9. Hence, the Criminal Original Petition is dismissed. However, the trial Court is directed to complete the trial in S.T.C.No.68 of 2016 , within a period of six months from the date of receipt of copy of the order.

10. At this juncture, the learned Counsel for the petitioners submitted 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.

12. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2020

Sub Assistant Registrar(CS)

vsd

To

1.The Judicial Magistrate,
Muthukulathur,
Ramnad District

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Inspector of Police,
Vallinokkam Police Station,
Ramnad District.

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

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