



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.21853 of 2016

and

Cr1.M.P(MD)Nos.11261 and 11262 of 2016

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1.Mohamed Haneefa

2.Mohammed Sabik

3.Salim

...Petitioners/Accused Nos.5, 6 & 7

Vs.

1.State Rep. by

The Inspector of Police,

City Crime Branch,

Trichy District.

(Crime No.08 of 2015)

...1st Respondent/Complainant

2.Mohammed Sharfudeen

...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to the charge sheet in C.C.No.236 of 2016 on the file of the Judicial Magistrate Court No.V, Trichirapalli and quash the same as illegal.

For Petitioners : Mr.J.Sulthan Basha

for M/s.Ajmal Associates

For R1

: Mr.R.Erottuchamy

Government Advocate(Cr1.Side)

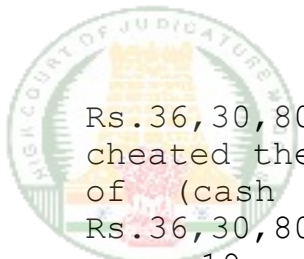
For R2

: Mr.M.Suresh

O R D E R

This petition has been filed to quash the proceedings in C.C.No.236 of 2016 on the file of the Judicial Magistrate Court No.V, Trichirapalli , as against the petitioners.

2.The case of the prosecution is that the petitioners along with other accused persons had forced the defacto complainant to invest with the Real Estate Business. Furthermore, the above said persons brainwashed the defacto complainant and his family members to get more interest and obtain a share of the profit to invest the above said business. On believing their words, the defacto complainant had invested a sum of Rs.20,09,776/- through cash and cheques during the period 20.06.2013 to 01.04.2014 for various installments. The above said amount was received by A1 & A2. Furthermore, the defacto complainant pledged his wife Anusiya's jewels and his sisters and relations's jewels namely Jeenath Begam, Nazeema Begam, Fathima Begam and Nagini Begam and encashed the same to the tune of Rs.16,31,901/-, Rs.4,95,500/-, Rs.6,56,300/-, Rs.5,80,100/- and Rs.2,67,000/- respectively and the total tune is



Rs.36,30,801/- and gave the same to A1 & A2. Totally, A1 and A2 cheated the defacto complainant and his relation's money to the tune of (cash and cheques Rs.20,09,776/- + Pledged jewel's money Rs.36,30,801) Rs.56,40,577/-. Consequently, the defacto complainant gave 19 gold coins (weight 1 sovereign) to the accused persons. After receiving the above said money, the above mentioned accused persons neither invested any money to the Real Estate Business nor have taken any steps to commence any other business activities. On knowing the same, on 01.07.2014, the defacto complainant and his family members approached the accused persons and requested to repay their money to the tune of Rs.56,40,577/-. On hearing the same, the accused persons (A1 to A7) abused the defacto complainant and his family members with filthy language and made a life threat. Hence, the defacto complainant sought for action against the accused persons. On receipt of the above said complaint, the first respondent police has registered a case in Crime No.8 of 2015 for the offence punishable under Sections 294(b), 420 and 506(ii) IPC as against the petitioners.

3. 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 first respondent police registered a case in Crime No. 8 of 2015 for the offences under Sections 294(b), 420 and 506(ii) IPC, as against the petitioners and the same has been taken cognizance in C.C.No.236 of 2016 on the file of the learned Judicial Magistrate No.V, Trichirapalli. Hence he prayed to quash the same.

4.The learned Government Advocate (Crl.Side) would submit that the trial has been commenced and some of the witnesses have been examined in this case.

5. Heard Mr.J.Sulthan Basha, learned counsel appearing for the petitioners and Mr.R.Erottuchamy, learned Government Advocate (Crl.Side) appearing for the first respondent and Mr.M.Suresh, learned counsel appearing for the second 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.

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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.

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. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.236 of 2016, in Crime No. 8 of 2015 on the file of the Judicial Magistrate No.V, Trichy. The petitioners are at liberty to raise all the grounds before the trial Court. The personal appearance of the petitioners is dispensed with and they shall be represented by a counsel after filing appropriate application. However, 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. The trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this order. It is made clear that any observation made by this Court would not affect the trial Court for disposing the trial.

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

Sd/-

Assistant Registrar (CSII)

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Sub Assistant Registrar (CS)



1.The Judicial Magistrate Court No.V,
Trichirapalli.

2.The Inspector of Police,
City Crime Branch,
Trichy District.

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

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-20842[F] dated
02/11/2020)

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CK(CO)

KB(01.12.2020) 5P 5C