



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.10.2020

CORAM:

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

CrI.O.P.(MD)No.21999 of 2016

and

CrI.M.P.(MD)Nos.11359 & 11360 of 2016

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Abirami

...Petitioner/Accused No.2
-Vs-

1.The State Represented by
The Inspector of Police,
District Crime Branch,
Ramanathapuram,
Ramanathapuram District.
(C.C.No.143 of 2016)

... 1st Respondent/Complainant

2.J.K.Mani

... 2nd Respondent/Defacto
Complainant

Prayer: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to the Charge Sheet in C.C.No.143 of 2016 on the file of the Judicial Magistrate No.2, Ramanathapuram, in Crime No.7 of 2014, dated 25.09.2010 on the file of the respondent police for alleged offences under Sections 406 & 420 of IPC and quash the same as illegal.

[Amended as per order of this Court made in CrI.M.P.(MD) No.11594 of 2016 in CrI.OP(MD)No.21999 of 2016 dated 25.11.2016 by MKKSJ]

For Petitioner	: Mr.D.Balamurugapandi
For R1	: Mr.R.Erottuchamy
	Government Advocate (CrI. side)
For R2	: No Appearance

O R D E R

This petition has been filed to quash the proceedings in C.C.No.143 of 2016 on the file of the Judicial Magistrate No.2, Ramanathapuram, thereby, taken cognizance for the offences under Sections 406 & 420 of IPC, in Crime No. 7 of 2014, as against this petitioner.

2.The case of the prosecution is that on 24.11.2010, the petitioner and four others have received a sum of Rs.24,00,000/- from the defacto complainant for cutting Karuvelam trees in the temple premises viz., 'Arulmigh Sri Kumarakadavul' to an extent of 100 acres. After receipt of money, the petitioner and other accused persons failed to do the same. On the repeated request of the defacto complainant, they have paid only a sum of Rs.7,67,000/- and also failed to repay the balance amount of Rs.16,33,000/-. Hence, the defacto complainant lodged a complaint before the respondent police. The respondent police registered a



case in Crime No.7 of 2014. After completion of investigation, they filed a final report before the learned Judicial Magistrate No.2, Ramanathapuram, and the same has been taken cognizance in C.C.No.143 of 2016 under the offences under Sections 406 & 420 of IPC. Challenging the same, the petitioner preferred this petition.

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3.The learned Counsel appearing for the petitioner would submit that the petitioner is an innocent person and she has not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.7 of 2014 for the offences under Sections 406 & 420 of IPC, as against the petitioner and the same has been taken cognizance in C.C.No.143 of 2016 on the file of the learned Judicial Magistrate No.2, Ramanathapuram. 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.D.Balamurugapandi, learned counsel appearing for the petitioner and Mr.R.Erottuchamy, learned Government Advocate (Crl. Side) appearing for the 1st 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.

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."

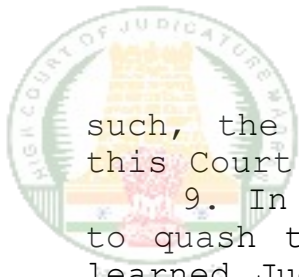
8. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"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
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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.143 of 2016 on the file of the learned Judicial Magistrate No.2, Ramanathapuram. The petitioner is at liberty to raise all the grounds before the trial Court. Considering the age of the petitioner, the personal appearance of the petitioner is dispensed with and she shall be represented by a counsel after filing appropriate application. However, the petitioner 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. 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.

10. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CrI Side)

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Sub Assistant Registrar(CS)

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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 No.2,
Ramanathapuram.

2.The Inspector of Police,
District Crime Branch,
Ramanathapuram,
Ramanathapuram District.

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

CrI.O.P. (MD)No.21999 of 2016
and

CrI.M.P. (MD)Nos.11359 & 11360 of 2016
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