



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:30.11.2020
CORAM
THE HONOURABLE Mr.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P. (MD) .No.22041 of 2016

and

Crl.M.P. (MD) .Nos.11380 and 11381 of 2016

WEB COPY

1.Alex Anthonyraj
2.Amalraj
3.Leemarose
4.Mary Jennifer ... Petitioner/Accused 1 to 4

Vs

1.The Inspector of Police,
Paalakkarai Police Station,
Trichy.
(Crime No.413 of 2016) ... 1st Respondent/Complainant
2.Sagayamari ... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the case in C.C.No.289 of 2016 on the file of the learned Judicial Magistrate No.V, Trichy and quash the same in so far as this petitioner is concerned.

For Petitioners : Mr.N.Mariappan
For R-1 : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl. Side)
For R-2 : Mr.T.Senthilkumar

ORDER

This petition has been filed to quash the proceedings in C.C.No.289 of 2016 on the file of the learned Judicial Magistrate No.V, Trichy, as against the petitioners herein.

2.The case of the prosecution is that on 07.08.2016, at about 00.30 hours while the second respondent was returning home after purchasing the medicines at the tea shop, at that time the first petitioner abused her by using filthy language. When the same was questioned by the second respondent, the petitioner and other said to have tried to attack the second respondent with knife. At that time, the second respondent has escaped. Hence, the second respondent has lodged a complaint and the same has been registered by the first respondent Police in Crime No.413 of 2016 for the offences under Sections 341, 294(b), 352 and 506(ii) of IPC, as against the petitioners and the same has been taken cognizance in C.C.No.289 of 2016 on the file of the learned Judicial Magistrate No.V, Trichy.



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.413 of 2016 for the offences under Sections 341, 294(b), 352 and 506(ii) of IPC, as against the petitioners and the same has been taken cognizance in C.C.No.289 of 2016 on the file of the learned Judicial Magistrate No.V, Trichy. Hence, he prayed to quash the same.

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

5. 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 deals with 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.

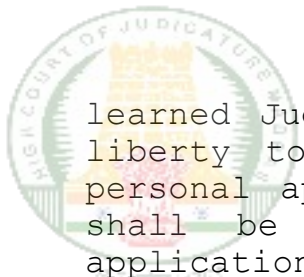
.....

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 petitioners 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 in C.C.No.289 of 2016 on the file of the

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learned 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. 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.

9.Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petition in Crl.M.P(MD) No.11380 of 2016 stands closed and Crl.M.P(MD) No.11381 of 2016 stands ordered.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vsg

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.V, Trichy.

2.Do Through

The Chief Judicial Magistrate, Trichy.

3.The Inspector of Police,

Paalakkarai Police Station, Trichy.

4.The Additional Public Prosecutor,

Madurai Bench of Madras High Court, Madurai.

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