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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 14/10/2020

PRESENT

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

Crl.O.P.(MD)Nos.22105, 22106 and 22107 of 2016

and

Crl.M.P.(MD)Nos.11425, 11427 and 11429 of 2016

Palanikumar

... Petitioner in All Crl.O.Ps/Accused No.2

Vs

1.The State,

Rep. by Inspector of Police,
Muthayapuram Police Station,
Thoothukudi,
Thoothukudi District.
(Crime No.135 of 1997)

...1st Respondent/Complainant
in both Crl.O.Ps.

2.Vertivel

... 2nd Respondent/ Defacto
Complainant
in both Crl.O.Ps.

Common Prayer: Criminal Original Petitions filed under Section 482 Cr.P.C. to call for the records in connection with the impugned charge sheets in P.R.C.Nos.14, 15 and 16 of 2001 pending on the file of Judicial Magistrate No.2, Thoothukudi, Thoothukudi District and quash the same in so far as the petitioner is concerned.

In All Crl.O.Ps

For Petitioner : Mr.D.Selvaraj
For R1 : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl.side)

C O M M O N O R D E R

These Criminal Original Petitions have been filed to quash the proceedings in P.R.C.Nos.14, 15 and 16 of 2001 pending on the file of the learned Judicial Magistrate No.2, Thoothukudi, Thoothukudi District.

2.The learned Counsel appearing for the petitioner would submit that the petitioners are innocents 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. 135 of 1997 for the offences under Sections 147, 148, 341, 307, 506(ii) IPC, as against the petitioner and taken cognizance for in PRC.No.14, 15 and 16 of 2001. He further submitted that except this petitioner no other accused are appearing for the trial Court and as such it is



pending for the past 19 years. Hence, he prayed to quash the same.

3.The learned Government Advocate (Crl.Side) would submit that the case is pending committal.

4.Heard Mr.D.Selvaraj, learned counsel appearing for the petitioner and Mr.K.Suyambulinga Bharathi, learned Government Advocate (Crl.Side) appearing for the first 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 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,



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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.Nos. 14, 15 and 16 of 2001 on the file of the learned Judicial Magistrate No.2, Thoothukudi, Thoothukudi District.



9.Considering the above facts and circumstances of the case, these Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petitions are closed . However, the trial Court is directed to split up the case of the petitioner from other accused persons and commit the case to the Court of Sessions forthwith and the Sessions Court is directed to complete the trial within a period of six months from the date of receipt of case bundles from the committal Court.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)

vsd

To

1.The Principal District Judge, Tuticorin.

2.The Judicial Magistrate No.II,
Thoothukudi.

3.-do- Thro The Chief Judicial Magistrate,
Tuticorin District.

4.The Inspector of Police,
Muthayapuram Police Station,
Thoothukudi,
Thoothukudi.

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

Crl.O.P. (MD)Nos.22105, 22106 and 22107 of 2016
and
Crl.M.P. (MD)Nos.11425, 11427 and 11429 of 2016
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