



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.11.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No.22653 of 2016

and

Cr1.M.P.(MD) No.11852 of 2016

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Raja

... Petitioner/Accused

Vs

The State represented by
The Inspector of Police,
District Crime Branch,
Palayamkottai,
Tirunelveli District.
Crime No.568 of 2016.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records relating to the criminal case in C.C.No.252 of 2016 on the file of the Judicial Magistrate No.I, Tirunelveli and quash the same as against the petitioner.

For Petitioner	:	Mr.R.Rajeshkumar
For Respondent	:	Mr.K.Suyambulinga Bharathi, G.A. (Crl. Side)

O R D E R

This petition has been filed to quash the case in C.C.No.252 of 2016 on the file of the Judicial Magistrate No.I, Tirunelveli.

2.The case of the prosecution is that on 08.05.2016, at about 10.00 hours, the Sub Inspector of Police, Palayamkottai Crime Police Station along with officials checkup the vehicle in front of Palayamkottai Market Police Station. At that time, one vehicle bearing Registration No.TDT 8131 Royal Enfield Bullet was driven by some one along with a billion rider and on seeing the police party, the said persons were trying to escape from the place, but, the respondent police caught hold them and on enquiry, came to know that they were 1. Sivasubramaniyan and 2.Isakki Pandi and on enquiry, they were not given proper answer and on suspicion the respondent police searched them and also verified the vehicle records and found that the records belongs to the vehicle is not proper and also they possessed equipments which used for preparing forged documents and the accused persons voluntarily come forward and given confession statement and accepted the offence committed by them. Based on the confession statement a case was registered in Crime No.568 of 2016 under Sections 41(1) (a) and 102 Cr.P.C. and Sections 468, 471, 473, 477 A of I.P.C. After investigation respondent police filed a charge sheet and the same was taken on file in C.C.No.252 of 2016,



on the file of the Judicial Magistrate No.I, Tirunelveli.

3.The learned Government Advocate (criminal side) would submit that in this case, the trial has already been commenced and the case is posted for examination of witnesses of L.W.3 to L.W.5.

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4. Heard learned counsel for the petitioner and the learned Government Advocate (criminal side) for the 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 **CrI.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

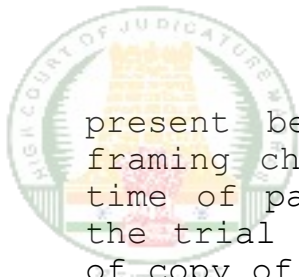
"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as 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 C.C.No.252 of 2016 on the file of the Judicial Magistrate, No.I, Tirunelveli. 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 he 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 three months from the date of receipt of copy of this Order.

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9. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

To

1.The Judicial Magistrate No.I,
Tirunelveli.

2.The Inspector of Police,
District Crime Branch,
Palayamkottai,
Tirunelveli District.

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

CRL.O.P (MD) No.22653 of 2016
24.11.2020

PM(CO)

KB(10.12.2020) 4P 4C