



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:07.12.2020
CORAM
THE HONOURABLE Mr.JUSTICE **G.K.ILANTHIRAIYAN**

Cr1.O.P. (MD) .No.22707 of 2016

and

Cr1.M.P. (MD) .Nos.11879 and 11880 of 2016

WEB COPY

1.Bala Murugan
2.Selvam
3.Rengasamy
4.Mariyadoss
5.Ramkumar

... Petitioners/Accused Nos.1 to 5

Vs

Utchimahali

... Respondent/Complainant

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records relating to the private complaint in C.C.No.167 of 2015 on the file of the Judicial Magistrate Court No.V, Tirunelveli and quash the same.

For Petitioners : Mr.J.Sulthan Basha
for M/S.Ajmal Associates
For Respondent : Mr.M.Pandian

ORDER

The Criminal Original Petition has been filed to quash the proceedings in C.C.No.167 of 2015 on the file of the Judicial Magistrate Court No.V, Tirunelveli, as against the petitioners.

2.The learned Counsel appearing for the petitioners submitted that the petitioners are innocent persons and they have not committed any offence as alleged by the prosecution. Without any base, the Judicial Magistrate Court No.V, Tirunelveli, has taken cognizance of the private complaint in C.C.No.167 of 2015 for the offences under Sections 147, 167, 323 and 325 of IPC, as against the petitioners. Hence he prayed to quash the same.

3.Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent.

4.It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Cr1.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.

5. 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."

6. 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.

7. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.167 of 2015 on the file of the Judicial Magistrate Court No.V, Tirunelveli. 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.

8. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petition in Crl.M.P(MD) No.11879 of 2016 stands closed and Crl.M.P(MD) No.11880 of 2016 stands ordered.

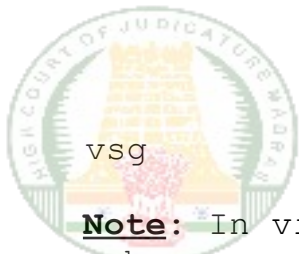
Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



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,
Tirunelveli.
- 2.The Registrar(Judicial)
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.M.Pandian,Advocate Sr.No.24349
+1cc to M/S.Ajmal Associates,Sr.No.24466

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