



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.11.2020

CORAM:

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

Crl.O.P.(MD)No. 22755 of 2016

and Crl.M.P.(MD) Nos. 11915 & 111916 of 2016

WEB COPY

J. Gibson Abel

... Petitioner/Accused No.1

-Vs-

The Inspector of Police,
Uvari Police Station,
Uvari, Tirunelveli District.
(Crime No.102 of 2013)

... Respondents/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records and quash the proceedings in C.C.No.330 of 2015 on the file of the Judicial Magistrate, Vallioor.

For Petitioner : M/s.S. Siva Thilakar

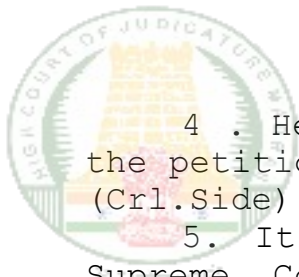
For Respondent : M/s. M. Ananthadevi
Government Advocate (Crl.Side)

O R D E R

This petition is filed to quash the proceedings in C.C.No.330 of 2015 on the file of the Judicial Magistrate, Vallioor, for the offences under section 304(A) of IPC, as against the petitioner.

2. The case of the prosecution is that the defacto complainant is father of the deceased, namely; Chithirai Vel. On 20.08.2013 at about 10.30 p.m., the defacto complainant came to know that his son Chithirai Vel died during his employment in the second plant at V.V. Mineral Private Sand Quarry Company. At that time, the petitioner was working as Company Operator and Murugesan was working as Shift incharge and Senthil was working as Plant Incharge and they were not supervising and maintaining the machine properly and without any security facility in the complaint. Hence, the complaint.

3. The learned counsel appearing for the petitioner would submit that in the occurrence took place the deceased was negligently behaving in the plant by using head phone from his mobile, thereby listening to some songs and due to the dereliction of duty of the deceased, he died and the petitioner is no way responsible for his death. Hence, he seeks anticipatory bail.



4 . Heard M/s.S. Siva Thilakar, learned counsel appearing for the petitioner and M/s. M. Ananthadevi, learned Government Advocate (Crl.Side) appearing for the respondent police.

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, 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, the ground raised by the petitioner is mixed question of fact and the same shall be decided during the trial only and hence, this Court is not inclined to quash the proceedings in C.C.No. 330 of 2015 on the file of the learned Judicial Magistrate, Valliyoor. The personal appearance of the petitioner is dispensed with and he shall be represented by a counsel. 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 in C.C. No.330 of 2015 , within a period of six months from the date of receipt of copy of the order.



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

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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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 Inspector of Police,
Uvari Police Station,
Uvari, Tirunelveli District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.SIVA THILAKAR, Advocate (SR-21372[F] dated
06/11/2020)

CrI.O.P. (MD)No.22755 of 2016
05.11.2020

SSS(CO)
AP(23/11/2020) 4P 4C