



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.12.2020

CORAM:

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

Crl.O.P. (MD)No.3719 of 2017

and

Crl.M.P. (MD)Nos.2749, 2750 and 5041 of 2017

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1.Balakrishnan

2.Malaimeru

...Petitioners/Accused Nos.1 & 3

-Vs-

1.The Inspector of Police,
All Women Police Station,
Paramakudi,
Ramanathapuram District.
(Cr.No.19 of 2009)

... 1st Respondent/Complainant

2.Vijaya

...2nd Respondent/Defacto Complainant

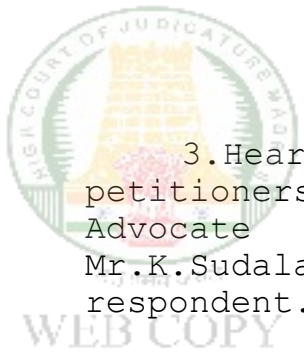
Prayer: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records in C.C.No.81 of 2010 on the file of the District Munsif Cum Judicial Magistrate, Mudukulathur and quash the same as against the petitioners herein and pass such further or other orders as this Hon'ble Court may deem fit and proper.

For Petitioners	: Mr.P.Muthusamy
For R1	: Mr.K.Suyambulinga Bharathi Government Advocate (Crl.side)
For R2	: Mr.K.Sudalaiyandi

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.81 of 2010 on the file of the learned District Munsif Cum Judicial Magistrate, Mudukulathur, as against the petitioners.

2.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 registered the case as against the petitioners in Crime No.19 of 2009 for the offence under Sections 498(A), 506(ii) IPC and Section 4 of Dowry Prohibition Act, the same has been taken cognizance in C.C.No.81 of 2010 on the file of the learned District Munsif Cum Judicial Magistrate, Mudukulathur, as against the petitioners. Hence, he prayed to quash the same.



3. Heard Mr.P.Muthusamy, learned counsel appearing for the petitioners and Mr.K.Suyambulinga Bharathi, learned Government Advocate (Crl.Side) appearing for the first respondent and Mr.K.Sudalaiyandi, learned counsel appearing for the second respondent.

4. 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.

5. 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."

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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.

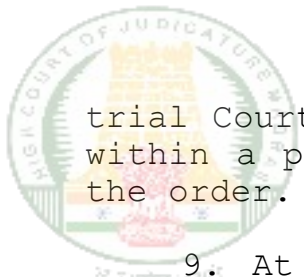
.....

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 petitioner cannot be considered by this Court under Section 482 Cr.P.C.

7. Admittedly, the first accused is living in abroad. Therefore, the trial Court issued Non Bailable Warrant as against the first accused and it is pending. When the Non Bailable Warrant is pending as against the first accused, the petitioners are not at all entitled for any relief.

8. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.81 of 2010 on the file of the learned District Munsif Cum Judicial Magistrate, Mudukulathur. Hence, the Criminal Original Petition is dismissed. However, the



trial Court is directed to complete the trial in C.C.No.81 of 2010, within a period of six months from the date of receipt of copy of the order.

9. At this juncture, the learned Counsel for the petitioners submitted that the presence of the petitioners before the Trial Court may be dispensed with.

10. Accepting the said submission, the personal appearance of the petitioner Nos.2 is dispensed with and he shall be represented by a counsel after filing appropriate application. The petitioner No.2 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.

11. Accordingly, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(T & P)

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/ /2021

Sub Assistant Registrar(CS)

vsd

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 District Munsif Cum Judicial Magistrate,
Mudukulathur.

2.The Inspector of Police,
All Women Police Station,
Paramakudi,
Ramanathapuram District.

+1 CC to Mr.K.SUDALAIYANDI, Advocate SR.No. 25452

Crl.O.P.(MD)No.3719 of 2017

and

Crl.M.P.(MD)Nos.2749 and 5041 of 2017

11.12.2020

AC(CO)

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