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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2022

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.NO.4400 OF 2020

AND

CRL.M.P.NOS.2526 AND 2528 OF 2020

Charles @ Charlee
S/o.Swamidoss

...Petitioner / Accused

Vs.

1.State by Inspector of Police,
H8, Thiruvottiyur Police Station,
Chennai - 600 019.
Crime No.8 of 2017.

2.K.R.Rajendran,
S/o.Muniyandi,

...Respondents / Complainant &
Defacto Complainant

Prayer : Criminal Original petition filed under Section 482 of the Code of Criminal Procedure, to call for records in CC No. 418 of 2017, now pending trial on the file of the Judicial Magistrate, Thiruvottiyur and quash the Final Report dated 10.05.2017.

For Petitioner : Mr.Anand Gopal
for M/s.T.S.Gopalan & Co.,

For R1 : Mr.A.Gopinath
Government Advocate (Crl.Side)

ORDER

This petition has been filed to quash the proceedings in C.C.No.418 of 2017, now pending trial on the file of the learned Judicial Magistrate, Thiruvottiyur and thereby taken cognizance for the offence under Section 304A I.P.C. in Crime No.8 of 2017, as against this petitioner.

2.The petitioner is a Civil Contractor who undertakes to carry out various civil works, repairs and maintenance for various companies in and around Thiruvottiyur. The petitioner is facing prosecution for offence u/s.304 A I.P.C. in respect of an Industrial Accident which took place in M/s.K.C.P. Limited Thiruvottiyur. The final report has been filed against the



petitioner and two other officials of the company which is now pending trial on the file of the learned Judicial Magistrate, Thiruvottiyur in C.C.No.418 of 2017. Hence prayed to quash the same.

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3.Learned Government Advocate (Crl. Side) would submit that already A1 and A2 in this case have filed a petition in Crl.O.P.No.3973 of 2018 to quash the proceedings against them and this Court vide its order dated 13.07.2021 directed the trial Court to complete the trial within the stipulated period. That apart, the grounds raised by the petitioner herein are all factual in nature and it cannot be considered under the jurisdiction of 482 Cr.P.C. He added that the trial has been commenced and some of the witnesses have been examined in this case.

4. Heard Mr.Anand Gopal, the learned counsel appearing for the petitioner and Mr. A.Gopinath, the learned Additional Public Prosecutor 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 deals with in respect of the very same issue in Crl.A.No.1572 of 2019 dated



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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



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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.418 of 2017 in Crime No.8 of 2017 on the file of the learned Judicial Magistrate, Thiruvottiyur. 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 six (6) months from the date of receipt of copy of this Order.

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

Sd/-

Assistant Registrar (CS-VII)

// True Copy //

Sub Assistant Registrar

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To

1. The Judicial Magistrate.
Thiruvottiyur.

2. Inspector of Police,
H8, Thiruvottiyur Police Station,
Chennai - 600 019.

3. The Public Prosecutor,
High Court of Madras
Chennai 600 104.

+1cc to M/s.T.S.Gopalan & Co., Advocate Sr.No.33320

Crl.O.P.No.4400 of 2020
& Crl.M.P.Nos.2526 & 2528 /2020

AJS (CO)
RVM(23/06/2022)