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Crl.O.P.No.12705 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2022

CORAM:

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

Crl.O.P.No.12705 of 2020
and Crl.M.P.Nos.4985 & 4986 of 2020

V.Ganesan

...Petitioner

-Vs-

1. The State rep. by
The Sub Inspector of Police,
TR Patnam Police Station,
Karaikal

2. Jayanthi

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records relating to the complaint in C.C.No.68 of 2019 on the file of the learned Judicial Magistrate II, Karaikal in Crime No.75 of 2018 on the file of the Sub Inspector of Police, TR Patnam Police Station, Karaikal and quash the same.

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel
For Ms.AL.Ganthimathi

For Respondents
For R1 : Mr.V.Balamurugane
Public Prosecutor (Pondy)

For R2 : No appearance



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ORDER

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This petition has been filed to quash the proceedings in C.C.No.68 of 2019 on the file of the learned Judicial Magistrate II, Karaikal, thereby taken cognizance for the offences under Sections 356, 379, 201, 411 of IPC r/w 34 of IPC, as against the petitioner.

2. The case of the prosecution on 20.08.2018 at about 14.30 hours, when the defacto complainant returned to her home, the accused 1 & 2 came in a two wheeler and snatched 3 ¼ sovereign of gold chain worth about Rs.80,000/- from her neck. It is further alleged that the petitioner herein purchased the stolen property from the accused 1 & 2 and in order to conceal the evidence, he had melted the gold chain. Hence, the respondent registered a case in Crime No.75 of 2018 offences under Sections 356, 379, 201, 411 of IPC r/w 34 of IPC and filed charge sheet in C.C.No.68 of 2019 before the learned Judicial Magistrate II, Karaikal, as against the accused persons.

3. The learned Senior Counsel appearing for the petitioner submitted that totally there are three accused in which, the petitioner is arrayed as A3. Even according to the case of the prosecution, the



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petitioner received the gold chain and melted the same and put seal of “V”. Though recovery is made from the petitioner, he cannot be prosecuted for the offence under Section 379 of IPC, since there is absolutely no intention for snatching the gold chain from the victim by the accused 1 & 2. If it is allowed to prosecute the petitioner, no one can conduct any business in the same kind. He further submitted that except the confession statement of the accused 1 & 2, there is absolutely no material to connect the petitioner to attract the other offences. Hence, he prayed for quashment of the present proceedings.

4. The learned Public Prosecutor (Pondy) appearing for the first respondent Police pointed out that the confession statement of the accused 1 & 2 are corroborated to each other. It also lead to the recovery of jewel in the melted form with the seal of “V”. Hence, he prayed for dismissal of the present petition.

5. Heard Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioner and Mr.V.Balamurugane, learned Public Prosecutor (Pondy) appearing for the first respondent. No one is appeared on behalf of the second respondent.



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6. On perusal of the confession statement of the accused 1 & 2 revealed that after knowing the fact that the jewel was stolen one, the petitioner received the same and melted it and put seal “V”. Only thereafter, the petitioner purchased the jewel for lesser price. Based on the confession statement given by the accused 1 & 2, recovery was made from the petitioner herein. Therefore, all the grounds raised by the petitioner cannot be gone into in the quash petition and it requires detailed trial by let in evidence before the trial Court.

7. In this regard, 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



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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.

8. 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



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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.”

9. 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



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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.

10. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.68 of 2019 in Crime No.75 of 2018 on the file of the learned Judicial Magistrate II, Karaikal. The petitioner is at liberty to raise all the grounds before the trial Court. Considering the facts and circumstances of the case, the personal appearance of the petitioner is dispensed with and he shall be represented by a counsel after filing



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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 months from the date of receipt of a copy of this Order.

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

04.07.2022

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

rts



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To
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1. The Judicial Magistrate II, Karaikal.
2. The Sub Inspector of Police,
TR Patnam Police Station,
Karaikal
3. The Public Prosecutor
Madras High Court,
Chennai.



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