

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.NO.15501 OF 2020

AND

CRL.MP.NO.5907 OF 2020

J.Domnic

... Petitioner

Vs.

1. State rep by its
Inspector of Police,
F3 Nungambakkam Police Station,
Chennai.

2. Saravana Muthu
(R2 is impleaded as per order
in Crl.MP.No.7745 of 2020
in Crl.OP.No.15501 of 2020
dated 07.02.2020)

... Respondents

PRAYER:

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to pass an order quashing the proceedings in so far as the petitioner is concerned in PRC.No.126 of 2019 pending on the file of the learned XIV Metropolitan Magistrate, Egmore, Chennai.

For Petitioner : Mr.R.Ganesh Kumar

For Respondents: Mr.A.Gopinath

Government Advocate (Crl. Side)

for R1

Mr.D.Sivaram

O R D E R

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C seeking orders to quash the proceedings in so far as the petitioner is concerned in PRC.No.126 of 2019 pending

on the file of the learned XIV Metropolitan Magistrate, Egmore, Chennai.

2. The case of the prosecution is that the defacto complainant was working as an Account Manager in a movie company and on 23.08.2016 at about 9 pm while he was walking near Kodambakkam bridge to reach Railway Station, one unknown person had come in an auto and attacked the defacto complainant with wooden log on his face, head and cheek, due to which, the defacto complainant fell unconscious and his co-worker had come and admitted him in the hospital.

3. The learned counsel for the petitioner would submit that the petitioner has been implicated as an accused only on the confession statement of the other accused persons, as even according to the prosecution, the petitioner has no specific overt act. There is absolutely no material to attract the offences as alleged by the prosecution.

4. A perusal of the available records and the statement recorded under Section 161 of Cr.P.C reveals that the first accused has misappropriated funds which belongs to the office/movie company. Thereafter, all the accused persons/A1 to A7 conspired to do away the defacto complainant. The petitioner herein/A7 arranged money to do away the defacto complainant. That apart, A7/ the petitioner herein attacked the defacto complainant with iron rod. There are specific overtacts as against the petitioner to attract the offences punishable under Sections 147, 349, 307 and 506(i) of IPC read with 149 and 109 of IPC whatever the contradictions found in the statement recorded under Section 161 of Cr.P.C and other grounds raised by the petitioner are misappropriation of law and there should be an opportunity gives to the account to enjoy the fruit of the trial before the trial court.

5. Considering the facts and circumstances of the case and the submissions made by both counsel, this Court finds no merits to quash the complaint lodged by the second respondent and this petition is liable to be dismissed.

6. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in CrI.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.

7. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in CrI.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."

8. 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.

9. In view of the above discussion, this Court is not inclined to quash the proceedings in PRC No.126 of 2019 on the file of the learned XIV Metropolitan Magistrate, Egmore, Chennai. The personal appearance of the petitioner is dispensed with. However, the trial Court is directed to complete the trial within a period of seven months from the date of receipt of copy of this Order.

10. Accordingly, these criminal original petitions are dismissed. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The XIV Metropolitan Magistrate,
Egmore, Chennai.
2. The Inspector of Police,
F3 Nungambakkam Police Station,
Chennai.
3. The Public Prosecutor,
High Court, Madras.

+2ccs to Mr.D.Sivaraam, Advocate, S.R.No.40160

Crl.O.P.No.15501 of 2020
and
Crl.MP.No.5907 of 2020

PMK(CO)
PM/26/07/2022