

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.NO.16377 OF 2020

AND

CRL.MP.NOS.6282 AND 6283 OF 2020

1. Ravi Kumar

2. Sarala

... Petitioners

.Vs.

1. The State Rep. by
The Inspector of Police,
W-21, All Women Police Station,
Guindy, Chennai.

... 1st Respondent/Complainant

2. D.Suganthi Sharmila

... 2nd Respondent/Defacto
Complainant

PRAYER:-

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in Crime No.3217 of 2019 on the file of the IX Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioners : Mr.A.J.Alwin Prabakar

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

O R D E R

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C seeking orders to call for the records pertaining to C.C.No.3217 of 2019 pending on the file of the IX Metropolitan Magistrate, Saidapet, Chennai and quash the same.

2. Totally, there are three accused involved in this case, in which, the petitioners have been arrayed as A2 and A3 who are in-laws of the second respondent herein in C.C.No.3217 of 2019 on the file of the IX Metropolitan Magistrate, Saidapet, Chennai for the offences punishable under Sections 406,506(ii) r/w 34 of IPC based on the complaint given by the second respondent.

3. The case of the prosecution is that the petitioners' son/A1 married the second respondent on 24.01.2016. After the marriage, A1 along with his parents/petitioners herein harassed her by demanding more money. It is further alleged that the petitioners are planning to perform the marriage of A1 with another girl and also allegedly threatened the second respondent. It is further alleged that A1/husband had done every thing under the instigation of the petitioners herein. Hence, the complaint is lodged by the second respondent as against the petitioners.

4. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.Side) for the first respondent police.

5. The learned counsel for the petitioners submitted that the petitioners have not committed any such offence as alleged by the second respondent and they have been falsely implicated in this case. He further submits that this is the case of the year 2017. Hence, he prays to allow this petition.

6. The learned Government Advocate (Crl.Side) submitted that pending this quash petition, already, the trial commenced and so far, the prosecution has examined PW1 and the matter is posted for further evidence of prosecution on the file of the IX Metropolitan Magistrate, Saidapet, Chennai. Since the trial already commenced, this court cannot entertain the quash petition and the same is liable to be dismissed.

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., wherein it has been held 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.

8. Recently, the Hon'ble Supreme Court of India, while dealing with 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, 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."

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 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.3217 of 2019 in Cr.No.11 of 2017 on the file of the IX Metropolitan Magistrate, Saidapet, Chennai. The petitioner is at liberty to raise all the grounds before the trial Court. Considering the age of the petitioners, the personal appearance of the petitioners are dispensed with before the trial court. However, the trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this Order.

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

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Vv

To

1. The IX Metropolitan Magistrate,
Saidapet, Chennai.

2. The Inspector of Police,
W-21, All Women Police Station,
Guindy, Chennai
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.A.J.Alwin Prabakar, Advocate, S.R.No.36827

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CRL.M.P.NOS.6282 AND 6283 OF 2020

MG(CO)
PBS/20/07/2022