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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.16865 of 2020
and Crl.M.P.Nos.6535 & 6536 of 2020

1. Rajesh
2. Radhakrishnan
3. Vimala

... Petitioners

Vs.

1. The Inspector of Police,
Steel Plant Police Station,
Salem District.
Crime No.27 of 2020.

2. Selvi

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records with respect of the charge sheet in C.C.No.880 of 2020 on the file of the Judicial Magistrate No.1, Salem and quash the same.

For Petitioners : Mr.R.Nalliyappan

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

For Respondent R2 : Notice served-No Appearance

O R D E R

This Criminal Original Petition has been filed to quash the proceedings pertaining to the charge sheet in C.C.No.880 of 2020 on the file of the Judicial Magistrate No.1, Salem for the offences under Sections 147, 148, 294(b), 427, 324 and 506(ii) IPC, in Crime No.27 of 2020, as against this petitioners.

2. Though notice was served to the 2nd respondent, no one appeared on behalf of the 2nd respondent.

3. The case of the prosecution is that the defacto complainant and her husband were in separate possession of 2¾ acres of land. While so, on 12.01.2020, the petitioners and



others under the instigation of the defacto complainant's brother one Govindaraj, attacked the defacto complainant's husband with iron rod, abused him in filthy language and caused life threat to them. Hence, the complaint.

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4. 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 police registered a case in Crime No.27 of 2020 for the aforesaid offences, as against the petitioners and the same has been taken cognizance in C.C.No.880 of 2020 on the file of the Judicial Magistrate No.1, Salem. Hence, he prayed to quash the same.

5. The learned Government Advocate (Crl.Side) appearing for the 1st respondent would submit that there is a case in counter registered against the 2nd respondent/defacto complainant in Crime No.26 of 2020 for the offences under Section 147, 148, 294 (b), 324 and 506(ii) IPC and after completion of investigation, final report in C.C.No.879 of 2020 has been filed and the same is also pending on the file of the Judicial Magistrate, Salem.

6. Heard Mr.R.Nalliyappan, learned counsel appearing for the petitioner and Mr.A.Gopinath, learned Government Advocate (Crl.Side) appearing for the 1st respondent.

7. It is seen from the First Information Report that there are specific allegations as against the petitioners to attract the offences, which has to be investigated in depth.

8. In view of the submissions made by either side, all the grounds raised by the petitioners are mixed question of fact and it has to be gone into by full-fledged trial.

9. 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 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



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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.

10. 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."

11. 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



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

12. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.880 of 2020 in Crime No.27 of 2020 on the file of the Judicial Magistrate No.1, Salem. The petitioners are at liberty to raise all the grounds before the trial Court. However, the learned Judicial Magistrate No.1, Salem is directed to conduct joint trial in C.C.Nos.879 and 880 of 2020 and complete the same within a period of six months from the date of receipt of a copy of this order.

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

s/d-

Assistant Registrar(CS III)

True Copy

Sub-Assistant Registrar

anu/sp
To

1. The Judicial Magistrate No.1,
Salem.



2. The Inspector of Police,
Steel Plant Police Station,
Salem District.

3. The Public Prosecutor,
Madras High Court.

+1cc to M/s.R.Nalliyappan, Advocate Sr.37258

Crl.O.P.No.16865 of 2020

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srg 08/07/2022