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Crl.O.P.No.17859 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2022

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THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.17859 of 2020

and

Crl.M.P.Nos.6947 and 6948 of 2020

Selvi

... Petitioner

Vs.

1.State represented by its
Inspector of Police,
Velipalyam Police Station,
Nagapattinam.

2.V.Mathiyazhagan

... Respondents

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to call for the records relating to STC.No.290 of 2018 dated 29.08.2018 on the file of the learned Judicial Magistrate-II, Nagapattinam and quash the same.

For Petitioner : Mr.S.Arivazhagan

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

For R2 : Mr.S.Nedunchezhiyan



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ORDER

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This petition has been filed to quash the charge sheet in S.T.C.No.290 of 2018 on the file of the learned Judicial Magistrate-II, Nagapattinam for the alleged offence under Sections 294(b), 352 of IPC in Crime No.56 of 2017, as against the petitioner.

2. The learned counsel for the petitioner would submit that the defacto complainant is an advocate who was appeared on behalf of the petitioner's husband in the maintenance case in M.C.No.1 of 2012 on the file of Judicial Magistrate-II, Nagapattinam. When the maintenance case was posted, the petitioner sought for time to file a counter due to which, the defacto complainant had grudge over the petitioner and foisted a false case as against the petitioner. Whereas, the maintenance case was not listed on 13.02.2017. Therefore, no occurrence was happened on that day. Therefore, the present case has been foisted as against the petitioner by the counsel on record appeared on behalf of the petitioner's husband.

3. A perusal of records revealed that a charge itself is that when the defacto complainant entered into the Court complex, the petitioner scolded him with filthy languages and also pulled him. It is not the case



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of the prosecution, that on the date of hearing the occurrence had taken place. A perusal of statement of the witnesses and charges revealed that there are specific allegations as against the petitioner. Further, the grounds raised by the petitioner are question of fact and it cannot be considered in the quash. All the grounds raised by the petitioner can be considered only by laying evidence before the Trial Court.

4. 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



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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.

5. 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.



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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.”

6. 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



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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.



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7. In view of the above discussion, this Court is not inclined to quash the charge sheet in STC.No.290 of 2018 on the file of the learned Judicial Magistrate II, Nagapattinam. The petitioner is at liberty to raise all the grounds before the trial Court. The personal appearance of the petitioner is dispensed with and she 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 three months from the date of receipt of a copy of this order.

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

29.06.2022

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
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G.K.ILANTHIRAIYAN, J.

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To

1. The Judicial Magistrate-II, Nagapattinam.
2. The Inspector of Police,
Velipalyam Police Station,
Nagapattinam.
3. The Public Prosecutor,
High Court, Madras.

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