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CL.OP(MD).No.14056 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.09.2022

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

CL.OP(MD).No.14056 of 2022 and
CL.MP.(MD)Nos.9033 & 9034 of 2022

Dhanush Kumar @ Muthukumar

... Petitioner

Vs

State rep. by
The Inspector of Police,
Setthur Police Station,
Srivilliputur
in cr.No.260 of 2015

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the entire records pertaining to the Spl.CC.No.7 of 2021 on the file of the Principal District Court, Srivilliputhur and to quash the same so far as the petitioner is concerned.

For Petitioner : Mr.Susi Kumar.C

For Respondent : Mr.E.Raj Thilak,
Additional Public Prosecutor



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ORDER

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This petition has been filed to quash the proceedings in Spl.CC.No.7 of 2021 on the file of the Principal District Court, Srivilliputhur, thereby taken cognizance for the offences under Sections 379 r/w 109 of IPC and 21(4) of Mines and Minerals (Development and Regulation) Act, in Crime No.260 of 2015, as against the petitioner.

2. The case of the prosecution is that the Sub Inspector of Police while he was in patrol work nearby river, on seeing him, driver of the tractor who possessed the river sand tried to run away from the place. He was restrained and detained by the Sub Inspector of Police and on enquiry found that using unregistered Mahindra 575-DI Sarpanch having trailer No.TN 67 K 9679 which belongs to the petitioner, the first accused took sand from the river i.e. $\frac{1}{4}$ unit worth about Rs.1,000/-. Hence the case.

3. The learned Counsel appearing for the petitioner would submit that the petitioner is innocent and he has not committed any offence as alleged by the prosecution. Without any base, the respondent police



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registered a case in Crime No.260 of 2015, as against the petitioner and the same has been taken cognizance in Spl.CC.No.7 of 2021 for the offences under Sections 379 r/w 109 of IPC and 21(4) of Mines and Minerals (Development and Regulation) Act on the file of the Principal District Court, Srivilliputhur. Hence he prayed to quash the same.

4. The learned Additional Public Prosecutor would submit that the trial has been commenced and some of the witnesses have been examined in this case.

5. Heard Mr.Susi Kumar.C, learned counsel appearing for the petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing for the respondent police.

6. 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



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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. 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



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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



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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



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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 Spl.CC.No.7 of 2021 in Cr.No.260 of 2015 on the file of the Principal District Court, Srivilliputhur. The petitioner is at liberty to raise all the grounds before the trial Court. Further, the personal appearance of the petitioner is dispensed with and he 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



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

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10. Accordingly, this criminal original petition is dismissed.

Consequently, connected miscellaneous petitions are also closed.

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Internet:Yes
Index:Yes/no
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G.K.ILANTHIRAIYAN. J,

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To

- 1.Principal District Court,
Srivilliputhur
- 2.The Inspector of Police,
Setthur Police Station,
Srivilliputur
- 3.The Public Prosecutor,
Madras High Court,
Chennai.

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