



WEB COPY



Crl.O.P.No.28953 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2022

CORAM:

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

Crl.O.P.No.28953 of 2022
and Crl.M.P.Nos.17724 and 17726 of 2022

Vedi

... Petitioner

Vs.

1. State represented by
The Inspector of Police,
Pennagaram Police Station,
Dharmapuri District.
(Crime No.601 of 2005)
2. T.Sivanandham,
Assistant Executive Engineer,
Tamil Nadu Electricity Board,
Pennagaram,
Dharmapuri District.

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records relating to the complaint in S.C.No.68 of 2019 on the file of the District and Sessions Judge, Dharmapuri and quash the same as far as the petitioner is concerned.

For Petitioner : Mr.V.Sakkarapani

For R1 : Mr.S.Santhosh
Government Advocate (Crl. Side)



Crl.O.P.No.28953 of 2022

ORDER

This Criminal Original Petition has been filed calling for the records relating to the complaint in S.C.No.68 of 2019 on the file of the District and Sessions Judge, Dharmapuri and to quash the same.

2. The case of the prosecution is that when the defacto complainant was at office, on 05.09.2005 at about 1 p.m, one Krishnan came and informed the defacto complainant that the petitioner had put an electric fence around his sugarcane field and passed the electric energy, thereby his brother namely one Munusamy died due to electric shock. Hence, a case was registered as against the petitioner for the offences under Sections 379 IPC (Energy theft) r/w Section 39 (1)(g) of Indian Electricity Act, 1910.

3. After completion of investigation, the respondent filed a final report and the same has been taken cognizance in S.C.No.68 of 2019 on the file of the District and Sessions Judge, Dharmapuri for the offences under Sections 379 IPC (Energy theft) r/w Section 39 (1)(g) of Indian Electricity Act, 1910.

4. The learned counsel for the petitioner would submit that mere



Crl.O.P.No.28953 of 2022

connection from the main line to the fence would not cause any death as alleged by the prosecution. Hence, he prayed to quash the proceedings.

5. The learned Government Advocate (Crl.Side) would submit that admittedly there was connection between main line to the fence. There was suspicion and as such the prosecution rightly deleted other charges except the theft of electricity. Therefore, there is no need to conduct any post mortem at the body of the deceased i.e, Munusamy and no need to enquire the brother of the deceased who informed about the electricity death.

6. Heard both sides.

7. It is seen from the records that one person died due to electrocution. However, there was no evidence to show that the person died only due to electrocution. Therefore, the respondent rightly deleted other charges and filed charge sheet only for the offences under Sections 379 IPC (Energy theft) r/w Section 39 (1)(g) of Indian Electricity Act, 1910. There is no evidence to show that the petitioner had drawn the electricity power from the main line to his fence in order to protect his crops from wild animals. Unfortunately, one person died while touching the fence.



Crl.O.P.No.28953 of 2022

WEB COPY

8. Therefore, the prosecution rightly dropped other charges and charged the petitioner only for electricity theft. Hence, there are materials to attract the offences under Section 379 IPC (Energy theft) r/w Section 39 (1)(g) of Indian Electricity Act, 1910.

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 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.



WEB COPY



Crl.O.P.No.28953 of 2022

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 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***, 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



WEB COPY



Crl.O.P.No.28953 of 2022

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 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.



WEB COPY



Crl.O.P.No.28953 of 2022

.....

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 are mixed question of facts and it cannot be considered in quash petition under Section 482 Cr.P.C.

12. In view of the above discussion, this Court is not inclined to quash the proceedings S.C.No.68 of 2019 on the file of the District and Sessions Judge, Dharmapuri. Considering the age of the petitioner, 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 six months from the date of receipt of a copy of this Order.



Crl.O.P.No.28953 of 2022

WEB COPY 13. Accordingly, this Criminal Original Petition stands dismissed.

Consequently, connected miscellaneous petitions are closed.

28.11.2022

Internet : Yes / No

Index : Yes / No

Speaking / Non Speaking order

mn



Crl.O.P.No.28953 of 2022

To

WEB COPY

1. The District and Sessions Judge, Dharmapuri.
2. The Inspector of Police,
Pennagaram Police Station,
Dharmapuri District.
3. Mr.T.Sivanandham,
Assistant Executive Engineer,
Tamil Nadu Electricity Board,
Pennagaram,
Dharmapuri District.
4. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN, J.



WEB COPY



Crl.O.P.No.28953 of 2022

mn

Crl.O.P.No.28953 of 2022
and Crl.M.P.Nos.17724 and 17726 of 2022

28.11.2022