



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.02.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)No.1131 of 2022

and

Crl.M.P(MD)Nos.810 & 813 of 2022

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1.K.Murugan
2.M.Santhanakumar @ Mariyakumar
3.M.Kannimariyal @ Mariammal
4.V.Thomas
5.C.Raja @ Mariyaraj ... Petitioners/Accused Nos.1 to 5

Vs.

1.State represented by,
The Inspector of Police,
Perumalpuram Police Station,
Tirunelveli City,
Tirunelveli District. ... 1st Respondent/Complainant

2.Chollamuthu ... 2nd Respondent/
Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in connection with the impugned charge sheet in C.C.No.1579 of 2019 pending on the file of the learned Chief Judicial Magistrate, Tirunelveli and quash the same.

For Petitioners : Mr.D.Selvanayagam
For R - 1 : Mr.B.Thanga Aravindh
Government Advocate

ORDER

This petition has been filed to quash the proceedings against the petitioners in C.C.No.1579 of 2019 pending on the file of the learned Chief Judicial Magistrate, Tirunelveli.

2. The case of the prosecution is that on 05.02.2019, at about 13.00 hours, while the petitioners 1 and 2 attempted to dig for septic tank construction in the place of the second respondent pathway, he questioned by the same. Due to which, the petitioners attacked the defacto complainant and abused him with filthy language. On the basis of the complaint lodged by the second respondent, the first respondent registered the case against the petitioners. After registering the F.I.R, the first respondent conducted investigation and laid the charge sheet before the learned Chief Judicial Magistrate, Tirunelveli District and the same has been taken on file in C.C.No.1579 of 2019. Challenging the impugned charge sheet, the present petition is filed.



3. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Criminal Side) appearing for the first respondent.

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 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. 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."

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

7. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.1579 of 2019 pending on the file of the learned Chief Judicial Magistrate, Tirunelveli. The petitioners are at liberty to raise all the grounds before the trial Court. Considering the facts and circumstances of the case, the personal appearance of the petitioners is dispensed with and they shall be represented by a counsel after filing appropriate application. However, the petitioners shall be present before the



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 copy of this order.

8. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Deputy Registrar (LA&MC)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Chief Judicial Magistrate,
Tirunelveli.
- 2.The Inspector of Police,
Perumalpuram Police Station,
Tirunelveli City,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
Crl.O.P (MD)No.1131 of 2022
21.02.2022

SB (CO)
GC (11.03.2022) 4P 4C