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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2022

CORAM:

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

Crl.O.P.(MD)No.2822 of 2022

AND

Crl.M.P.(MD)Nos.2107 and 2108 of 2022

1.Udaiyali ... Petitioner/Sole Accused

Vs.

1.The State represented by
The Inspector of Police
Theni Police Station,
Theni District.

...1st Respondent/Complainant

2.Gurusamy

...2nd Respondent/
Defacto Complainant

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records of the proceedings in S.T.C.No.1332 of 2021 on the file of the Judicial Magistrate, Theni, Theni District and quash the same.

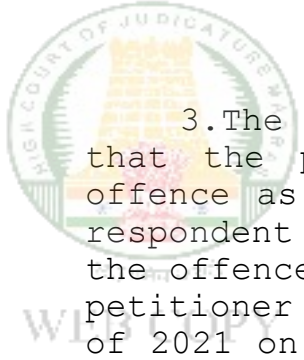
For Petitioner : Mrs.S.Pakalavan

For R1 : Mr.R.M.Anbunithi
Addl.Public Prosecutor (Crl.Side)

ORDER

This petition has been filed to quash the proceedings in S.T.C.No.1332 of 2021 on the file of the Judicial Magistrate, Theni, Theni District and to quash the same, thereby taken cognizance for the offences under Sections 338, 279, and 337 of IPC, as against the petitioner.

2.The case of the prosecution is that on 24.10.2020, the second respondent asked one Muthupandi to pick him up at MS Aluminum Hardwares. The said Muthupandi came to the spot by his Bajaj bike bearing Registration Np.TN 60 AV 0630 and went to work from west to east in Theni-Madurai Main Road. At that time a Wagon R Car bearing Registration No.TN 60 AH 0266 overtook the two wheeler and thereafter dashed the two wheeler. The second respondent and the said Muthupandi sustained injuries and both of them had been admitted in the Government Theni Medical College Hospital, K.Vilaku. The first respondent went to the said hospital and obtained oral complaint and filed FIR in Crime No.3805 of 2020 for the offences under Sections 338, 279, and 337 of IPC, dated 25.10.2020.



3.The learned Counsel appearing for the petitioner would submit that the petitioner is innocent and he had not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.3805 of 2020 for the offences under Sections 338, 279, and 337 of IPC as against the petitioner and the same has been taken cognizance in S.T.C.No.1332 of 2021 on the file of the learned Judicial Magistrate, Theni, Theni District. Hence he prayed to quash the same.

4.The learned Additional Public Prosecutor would submit that the petitioner was absent before the Trial Court and as such, the non-bailable warrant has been issued against the petitioner and it is still pending for execution.

5.Heard both sides and perused the materials available on record.

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 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.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



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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 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:

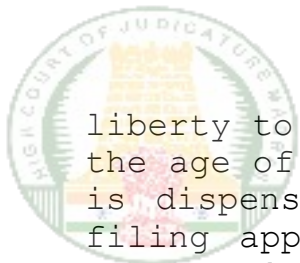
"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as 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 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 S.T.C.No.1332 of 2021 on the file of the Judicial Magistrate, Theni, Theni District. The petitioner is at



liberty to raise all the grounds before the trial Court. 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.

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

Sd/-

Assistant Registrar (As)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

lr

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purpose, 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 Judicial Magistrate, Theni.
2. The Inspector of Police
Theni Police Station,
Theni District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Registrar(Judicial),
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD) No.2822 of 2022

09.02.2022

MGJ(25.02.2022) 4P 5C