



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.02.2022

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)No.2834 of 2022

and

Crl.M.P (MD) Nos.2115 and 2116 of 2022

1. P.Gopalakrishnan @ Gopalan
2. S.Santhakumar
3. T.Kannan
4. M. Nikesh
5. P.Balakrishnan
6. S.Iyyappan
7. T.Paulmani
8. C.Prabhu @ Thanga Suresh
9. V.Sundar
10. K.Pranesh
11. M.Nishanth
12. M.Sudan
13. S.Sivakumar
14. E.Dinesh
15. E.Deepak
16. R.Kasi @ Kasi Nadar
17. G.Sudhakar
18. S.Kumar @ Krishnakumar
19. V.Prabakar @ Prabakaran
20. T.Tamilarasan @ Tamil Selvan
21. R.Shri Padmanabhan
22. V.Somasundaram
23. T.Divya Prabakaran @ Divya Prabeen
24. K.Kannan
25. C.Silambarasan
26. S.Kasi @ Saiju
27. S.Murugesan
28. R.Rajesh
29. C.Subin
30. M.Jegan
31. C.Sundaram
32. A.Murugesan
33. W.Jeyaseelan
34. R.Balakrishnan
35. S.Anandh Raj

... Petitioners



1. The Superintendent of Police,
Kanyakumari District
At Nagercoil.

2. The Inspector of Police,
Eraniel Police Station,
Kanyakumari District.

3. Maria Francis

... Respondents

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records from the learned Judicial Magistrate, Eraniel, Kanyakumari District in C.C.No.115 of 2020 and quash the same.

For Petitioners : Mr.Ananth C Rajesh

For Respondents : Mr.R.M.Anbunithi
No.1 & 2 Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to call for the records from the learned Judicial Magistrate, Eraniel, Kanyakumari District in C.C.No.115 of 2020 and quash the same.

2. The case of the prosecution is that a revenue proceedings was conducted by the District Collector, Kanyakumari District based on the orders of this Court in WP(MD) No.1132 of 2015 dated 01.06.2015. The order was passed by the District Collector, Kanyakumari District in ROC No.F1/3501/2015 dated 01.09.2015, the operative portion is extracted hereunder:

" 10(iii) The Revenue Divisional Officer, Padmanabhapuram is directed to take necessary action to restore the gate in the Grave Yard. But it is barred to use the name of the hamlet as "Nullivilai" in this grave yard, as it is against Government records. However there is no bar to utilize the name of the Revenue Village/Village Panchayat/church name in this grave yard. A status quo is ordered in the maintenance of official record maintained with village panchayat so that there will not be any change in the name of the hamlet in this block"

The original dispute is that Peyankuzhi and Nullivilai are the neighbouring villages. Peyankuzhi is dominated by Hindus and Nullivilai is dominated by christians. There is a cemetery at Peyankuzhi which was maintained by the persons from Nullivilai.



The administrator started the trouble by naming the cemetery as Nullivilai Cemetery which was objected by the people at Peyankuzhi. The writ petition was filed to finalize the name of the village and the District Collector passed the above order. To encroach the Peyankuzhi village by the Christians several properties were named as Nullivilai instead of Peyankuzhi. In spite of the Collector's order the cemetery name was not changed and new name boards were erected in the buildings own by people from Nullivilai. The encroachers not accepted the request of the people from Peyankuzhi to change the name as Peyankuzhi instead of Nullivilai in the respective buildings. The people from Peyankuzhi executed the order of the District Collector by removing the name board as Nullivilai on 13.12.2015. This happened due to the failure of the Revenue Authorities and the police administration. For the above said facts three cases has been registered in Crime No.863 of 2015 for the offences under Sections 147,148,294(b), 448,506(ii) of IPC and section 3(1) of TNPPDL Act, Crime No. 864 of 2015 for the offences under Sections 147,148,294(b),324,506(ii) of IPC and section 3(1) of TNPPDL Act and Section 4 of TNPHW Act, Crime No.865 of 2015 for the offences under Sections 147,148,397, 295(A) , 506(ii) of IPC and section 3(1) of TNPPDL Act.

3. The learned Counsel appearing for the petitioners would submit that the petitioners are innocent and they have not committed any offence as alleged by the prosecution and the cases are imaginary.. Without any base, the first respondent police registered a case in Crime No.864 of 2015 for the offences under Sections 147,148,295(b),324,427,506(ii) of IPC and Section 4 of TNPHW Act, as against the petitioners and the same has been taken cognizance in C.C.No. 115 of 2020 on the file of the learned Judicial Magistrate, Eraniel, Kanyakumari District. 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 the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the first respondent.

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.

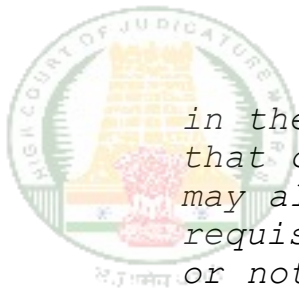
7. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in **Crl.A.No.1572 of 2019** dated 17.10.2019 in the case of **Central Bureau of Investigation Vs. Arvind Khanna**, wherein, it has been held as follows:

"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 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 petitioners 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 C.C.No. 115 of 2020 on the file of the learned Judicial Magistrate, Eraniel, Kanyakumari District. The petitioners are at liberty to raise all the grounds before the trial Court. The trial Court is directed to complete the trial within a period of twelve months from the date of receipt of copy of this Order.

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

Sd/-

Assistant Registrar (WRITS)

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Sub Assistant Registrar(CS)

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To

1. The Judicial Magistrate,
Eraniel,
Kanyakumari District



2. The Superintendent of Police,
Kanyakumari District At Nagercoil.

3. The Inspector of Police,
Eraniel Police Station,
Kanyakumari District.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.ANANTH C RAJESH, Advocate (SR-5265[F] dated
10/02/2022)

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USK/23.02.2022/6P/6C