



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.04.2022

CORAM

WEB COPY

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

CrI.O.P(MD)No.2760 of 2022

and

CrI.M.P(MD).Nos.2084 and 2085 of 2022

R.Venkatachari @ R.V.Chari

... Petitioner / 2nd Accused

Vs.

1. The Inspector of Police,
Cantonment Police Station,
Tiruchirapalli.
(Cr.No.1036 of 2019)

...1st Respondent/Complainant

2.Shahjahan

...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying this Court to call for the records relating to C.C.No.1294 of 2020 on the file of the Judicial Magistrate - II, Trichy in Crime No.1036 of 2019 on the file of the first respondent and quash the same as against the petitioner concerned.

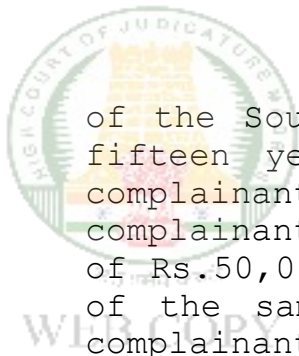
For Petitioner: M/s.AL.Ganthimathi
For R1 : Mr.B.Thanga Aravindh
Government Advocate (CrI.side)
For R2 : Mr.J.Sulthan Basha
for M/s.Ajmal Associates

ORDER

This petition has been filed to quash the proceedings in C.C.No.1294 of 2020 on the file of the learned Judicial Magistrate II, Trichy in Cr.No.1036 of 2019 on the file of the first respondent.

2.The learned counsel for the petitioner would submit already the entire bundle has been handed over to the petitioner. However, the petitioner failed to engage any counsel on their behalf to appear before this Court. Today, no one appeared in person or by new counsel.

3.The case of the prosecution is that the first accused namely Rajasekaran and the *de facto* complainant were employed together in the position of the Commercial Inspector in Tiruchirappalli Division



of the Southern Railway. Whiles, the first accused had stolen a fifteen year old signed blank cheque belonging to the de facto complainant and kept in his possession. When the de facto complainant retired from service, he had received a gratuity payment of Rs.50,00,000/- (Rupees Fifty lakhs only). Allegedly being aware of the same, the first accused fraudulently gain the de facto complainant's money, had deposited the cheque in the savings account of the petitioner. On such debiting of money from the de facto complainant's account, he had approached the Bank Manager. On enquiry with the petitioner, he had informed him that the money was deposited by the first accused for the debts owned to the petitioner. Thereafter, the concerned Officer reversed the transaction and froze the same, unilaterally. It is also alleged that the first accused was in the habit of borrowing money from several persons. There were 138 proceedings pending against him. Further, since there has been no contact between the petitioner and the first accused, they had committed this fraudulent acts together. The first accused had committed an offence under Section 379 and 420 r/w Section 34 of IPC and the petitioner had committed an offence under Section 420 r/w Section 34 of IPC.

4.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.

5.The learned Government Advocate (Crl.side) would submit that the trial has been commenced and some of the witnesses have been examined in this case.

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.**, wherein it is held 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 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 C.C.No.1294 of 2020 on the file of the learned Judicial Magistrate II, Trichy. 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.

10.Accordingly, this criminal original petition is dismissed. Consequently connected miscellaneous petition in Crl.M.P(MD) No.2084 of 2022 stands dismissed and Crl.M.P(MD) No.2085 of 2022 stands allowed.

Sd/-

Assistant Registrar

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsd

To

- 1.The Judicial Magistrate II, Trichy.
- 2.The Inspector of Police,
Cantonment Police Station, Tiruchirapalli.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy To

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

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-19809[F] dated 20/04/2022)

Crl.O.P(MD)No.2760 of 2022
19.04.2022

MK/30.05.2022/4P/6C

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