



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.03.2022

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P(MD)No.3164 of 2022

&

Crl.M.P(MD)Nos.2367 & 2369 of 2022

Prabha ... Petitioner/Accused No. 2  
Vs.

1. The State represented by  
The Inspector of Police,  
CCB Police Station,  
Trichy City.  
(Crime No.29 of 2016)

... 1<sup>st</sup> Respondent/  
Complainant

2. Sridhar

... 2<sup>nd</sup> Respondent/  
Defacto Complainant

**Prayer:** Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in relating to the impugned charge sheet in C.C.No.1083 of 2021 on the file of the learned Judicial Magistrate No.I, Trichy and to quash the same.

For Petitioner : Mr.G.Prabhu Raja Durai

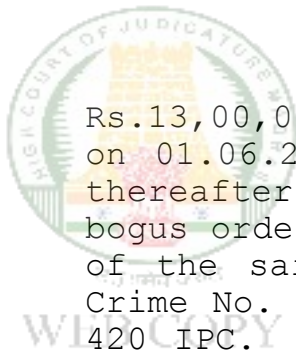
For Respondents : Mr.K.Sanjai Gandhi  
Government Advocate (Criminal Side)  
for R.1

Mr.N.Ananda Kumar for R.2

### ORDER

This Criminal Original Petition has been filed to quash the impugned charge sheet in C.C.No.1083 of 2021 on the file of the learned Judicial Magistrate No.I, Trichy.

2. The case of the prosecution is that the second respondent lodged a complaint alleging that the first accused is running an Institute, namely, Bharathiyar Uni School of Development Education. The second accused, who is none other than the wife of the first accused, is working as Assistant Professor in Bharathithasan University [constituent], Model College for Women. The first accused informed the defacto complainant that if he gave Rs.13,00,000/- (Rupees Thirteen Lakhs only) they will arrange for a Government Job in Bharathithasan University [constituent], Model College. Believing their words, the defacto complainant paid a sum of



Rs.13,00,000/- (Rupees Thirteen Lakhs only) to the accused persons on 01.06.2015. The first accused issued an appointment order and thereafter, the defacto complainant came to understand about the bogus order issued by the first accused and cheated him. On receipt of the said complaint, the first respondent registered a case in Crime No. 29 of 2016 for the offences under Sections 465, 468, 471, 420 IPC. The first respondent, after completion of investigation, filed the final report and the same has been taken cognizance in C.C.No.1083 of 2021 for the offences under Sections 465, 468, 471 and 420 IPC, in which, the petitioner is arrayed as second accused.

3. The learned counsel for the petitioner would submit that, there is no specific overtact as against the petitioner / wife of the first accused. The only allegation is that the petitioner also accompanied with the first accused at the time of receiving the money. She is working in Bharathithasan University [constituent], Model College for Women at Perambalur, during the period of 15.09.2014 to 24.06.2015. The petitioner got married to the first accused on 01.02.2009 and due to their wedlock, they gave birth to their daughter. During their matrimonial life, they created a Trust in the name of Sri Sai Educational & Charitable Trust, vide the Trust deed, on 19.12.2013, in which, the petitioner is one of the trustees. The above execution of the trust was made without knowledge of the petitioner and she did not even sign the same. Therefore, there was a misunderstanding between them and as such, the petitioner filed a Divorce Petition in H.M.O.P.No.44 of 2018 before the learned Principle Sub Court, Trichy, as against the first accused and obtained the decree of divorce. Therefore, there is no nexus between the petitioner and the first accused and she is in no way connected with the alleged offences committed by the first accused.

4. A perusal of the statements and documents produced by the prosecution would show that there are ample evidence as against the petitioner to attract the offences under Sections 465, 468, 471 and 420 IPC. The divorcé decree obtained by the petitioner is an ex-parte decree. Further, when the petitioner was working as Assistant Professor in Bharathithasan University [constituent], Model College, both the accused created a Trust in the name of the Sri Sai Educational & Charitable Trust in which the petitioner is one of the trustees. In all, from the statements, it is seen that there is a specific overtact as against the petitioner.

5. 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.

6. 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."

7. 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.

8. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.1083 of 2021 on the file of the learned Judicial Magistrate No.I, Trichy. The trial Court is directed to complete the trial within a period of nine months from the date of receipt of a copy of this Order.

9. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

mga

**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

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correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Judicial Magistrate No.I,  
Trichy.
2. The Inspector of Police,  
CCB Police Station,  
Trichy City.
3. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

+1 CC to M/s.M.S.JEYAKARTHIK, Advocate ( SR-15249[F] dated  
30/03/2022 )

Crl.O.P(MD)No.3164 of 2022

&  
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RK(16/05/2022) 5P 5C