



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2022

CORAM:

WEB COPY

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

Crl.O.P.(MD) No.3295 of 2022

S.Mariappan

...Petitioner

Vs.

The Inspector of Police
Sendamaram Police Station
Tirunelveli District

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in PRC number 23 of 2020 on the file of the learned Judicial Magistrate, Tenkasi and quash the charge sheet in its entirety.

For Petitioner: M/s.Anathapadmanabhan N

For Respondent: Mr.R.M.Anbunithi
Additional Public Prosecutor

ORDER

This petition has been filed seeking direction to call for the records in PRC number 23 of 2020 on the file of the learned Judicial Magistrate, Tenkasi and quash the charge sheet in its entirety.

2.The case of the prosecution is that a dead body was found floating in a pond on 15.06.2016 and the same was reported to the local VAO by someone. Investigation was set into motion by Sridhar who is the VAO of Ariyanayagipuram village within whose jurisdiction the dead body was found floating in the stagnant water in a pond with stab injuries on the neck and back. The Village Administrative Office came to know about the occurrence at about 09.30 AM on 15.06.2020 and rushed to the spot at about 09.45 AM and on seeing the dead body floating in water, came to police station to lodge a complaint in writing at 10.30 AM on the same day.

3.The learned Counsel for the petitioner would submit that the final report as presented by the Investigating Officer and accepted and taken on file as PRC number 23 of 2020 by the learned Judicial Magistrate, Tenkasi is nothing but bereft of any material that can directly implicate the petitioner and hence the same has to be



quashed at the threshold and the final report is nothing but product of political vengeance by the highly placed persons who were unable to tolerate the defection of the petitioner from that of the ruling party and joining another party that had broken away. He would also submit that the entire charge sheet does not contain any statement from anyone to have witnessed the occurrence in order to connect this petitioner with that of the offence. Further except for the confession of Co-accused which appears to have been recorded on 23.09.2019 and subsequent to that absolutely there is no other material to connect the petitioner with the offence and two witnesses by name Esaki Ammal @ Marthal and another person by name Sasi Murugan who have given statement at the earliest point of time dinning any knowledge about the motive or participation of any of the accused persons and further statement have been obtained from them on 08.10.2019 stating that they heard about the involvement of the petitioner. He would also submit that in the absence of any direct material that is capable of linking the petitioner with that of the offence and when the statement given by the near relatives as early as on 17.06.2016 do not disclose any material suggesting any motive our participation of this petitioner it is abundantly clear that a new case has been designed only after 01.09.2019 when the petitioner had defected from the ruling political party. He would also submit that from the statement of dates and events enclosed with this petition it is very clear at all the subsequent developments have taken place only after 01.09.2019 that is the date on which the petitioner defected from the ruling political party. He would further submit that the material placed by the investigating agency before the committal court is absolutely vague and the offence contemplated is one under Section 302 which carries capital punishment the theory that severe the offence stringent is the quality off material required even to make out a prima facie case against the accused. He would further submit that the entire charge sheet is fabricated on assumptions and surmises which is devoid of any merit and the screen deliberately pressed into service to hire us the petitioners and destroy his political career and further this charge sheet is a rank example of the various grounds laid down by the Hon'ble Apex Court in ***State of Haryana versus Bhajan Lal reported in 1992 Supplement 1 SCC 335.***

4. The learned Additional Public Prosecutor would submit that the case is pending committal

5. Heard the learned counsel appearing on either side.

6. Further there are specific allegations as against the petitioner and it is a case of 302 of IPC and all the grounds raised by the petitioner is factual in nature and that can be considered only during the trial.



7. 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.

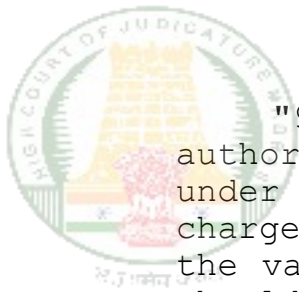
13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

8. 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."

9. 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.

10. In view of the above discussion, this Court is not inclined to quash the proceedings in PRC number 23 of 2020 on the file of the learned Judicial Magistrate, Tenkasi.

11. Accordingly, this criminal original petition is dismissed.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar

To

1. The Judicial Magistrate, Tenkasi.
2. The Inspector of Police,
Sendamaram Police Station, Tirunelveli District
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Crl.O.P.(MD) No.3295 of 2022
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