



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.02.2022

CORAM:

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

Crl.O.P.(MD) No.3109 of 2022

and Crl.M.P(MD) Nos.2336 and 2338 of 2022

WEB COPY

1. Basheer Ahamed
2. Sahubar Shathik
3. Ramjia Banu
4. Mariyam Beevi

...Petitioners/ Accused 1 to 4

Vs.

1. The Sub Inspector of Police
Aruppukottai Town Police Station
Virudhunagar District ...1st Respondent/ Complainant

2. Kasali ...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in the case in C.C.No.154/2021 on the file of the Judicial Magistrate Court, Aruppukottai and quash the same as illegal, violation of law and abuse the process of law

For Petitioner : M/s.Jothi Basu M

For Respondents : Mr.K.Sanjai Gandhi
No.1 Government Advocate(Crl.Side)

ORDER

This petition has been filed seeking direction to quash the proceedings in C.C.No.154/2021 on the file of the Judicial Magistrate Court, Aruppukottai as against the petitioners.

2. The case of the prosecution is that the defacto complainant has paid a sum of Rs.30,00,000/- to the first petitioner/accused to purchase a land at Aruppukottai. It is stated that the first petitioner/first accused had arranged a land and sale deed was registered in favour of the defacto complainant . After some time, the defacto complainant understands that the land in which the sale deed was registered in his favour is not worth about Rs.30,00,000/- It is also stated that he has asked the first accused to repay the amount and also filed a complaint before the police and during enquiry the accused agreed to return the amount. On 08.02.2020 at about 10.00 hrs, the defacto complainant's wife and elder sister went to the house of the accused and demanded the amount at that time, the accused persons have scolded them in filthy language and



also assaulted them. Hence the case came to be registered.

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.

4. 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.

5. Heard the learned counsel appearing on either side.

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:

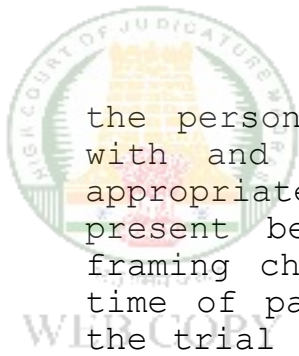
"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as 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.154/2021 on the file of the Judicial Magistrate Court, Aruppukottai. The petitioners are at liberty to raise all the grounds before the trial Court. However,



the personal appearance of the petitioners 3 and 4 are dispensed with and they shall be represented by a counsel after filing appropriate application. However, the petitioners 3 and 4 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 nine 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 (A.D.II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1. The Sub Inspector of Police
Aruppukottai Town Police Station
Virudhunagar District

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

+1 CC to M/s.G.M.LAW OFFICE, Advocate (SR-6136[F] dated
15/02/2022)

Crl.O.P.(MD) No.3109 of 2022
14.02.2022

RD(01.03.2022) 4P 4C