



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.04.2022

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)No.9293 of 2021

and

Crl.M.P(MD)Nos.4759 & 4760 of 2021

WEB COPY

1.P.Bharathidasan

2.Dhasarath Dev

... Petitioners/Accused Nos.1 & 2

Vs.

1.The State represented by,
The Inspector of Police,
Vangal Police Station,
Karur,
Karur District.
(Crime No.52 of 2019).

... 1st Respondent/Complainant

2.V.Srinivasamurthy

... 2nd Respondent/
Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the above C.C.No.149 of 2020 on the file of the learned Judicial Magistrate No.1, Karur and quash the same.

For Petitioners	: Mr.K.R.Laxman
For R - 1	: Mr.B.Thanga Aravindh Government Advocate (Crl. Side)
For R - 2	: Mr.R.Suriya Narayanan

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.149 of 2020 on the file of the learned Judicial Magistrate No.1, Karur, as against the petitioners.

2. The second respondent lodged a complaint alleging that he has been working in the Karur Vysya Bank as a Director and he is having a ready made garments factory. While being so, the first petitioner, who is having tailoring business, approached for supplying some sewing machines with the help of which, he would prepare the ready made garments and supply to the defacto complainant shop and believing such statement, he gave 64 sewing machines with a condition that he would complete the works and return the said machines on or before 01.04.2017 and it is further alleged that the first petitioner failed to return the said sewing machines to him and alleged that he handed over the same to one Jeyakumar, who sold the same to the third parties and thus, both have colluded and did not return the said machines as per the



agreement and it is further alleged that in such circumstances, the second petitioner also sent an e-mail to one Mukeshkumar Singha showing interest in supplying ready made garments if the sewing machines are supplied to him and it is further alleged that on 08.03.2019 at about 05.00 p.m., when the defacto complainant was returning from his factory in his car, the petitioners have waylaid him near the ATM and abused him with filthy language and physically assaulted and also threatened him with dire consequences. Hence, the second respondent lodged the complaint. After conducting enquiry, the first respondent filed the charge sheet before the learned Judicial Magistrate No.2, Karur and the same has been taken on file in C.C.No.149 of 2020.

3. Heard the learned counsel appearing for the petitioners, the learned Government Advocate (Criminal Side) appearing for the first respondent and the learned counsel appearing for the second respondent and perused the materials available on record.

4. 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 the Honourable Supreme Court of India 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.

5. 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 the Honourable Supreme Court of India has held as



"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."

6. 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**, wherein the Honourable Supreme Court of India has held 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.

7. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.149 of 2020 on the file of the learned Judicial Magistrate No.1, Karur. The petitioners are at liberty to raise all the grounds before the trial Court. Considering the facts and circumstances of the case, the personal appearance of the petitioners are dispensed with and they shall be represented by a counsel after filing appropriate application. However, the petitioners 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.

8. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Protocol)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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

To

1.The Judicial Magistrate No.1,
Karur.



2.The Inspector of Police,
Vangal Police Station,
Karur,
Karur District.

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

+1 CC to M/s.K.R. LAXMAN, Advocate (SR-18038[F] dated 12/04/2022)

+1 CC to M/s.R. SURIYA NARAYANAN, Advocate (SR-18211[F] dated
12/04/2022)

CrI.O.P(MD)No.9293 of 2021
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MGJ(22.04.2022) 5P 6C