



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2022

CORAM

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

Crl.O.P(MD) No.3430 of 2020

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- 1.Prabakaran
- 2.Duraipandi
- 3.Subburaj
- 4.Balamurugan
- 5.Kaleeswaran
- 6.Mummoorthy
- 7.Muthupandiarajan @ Muthupandi
- 8.Parthipan
- 9.Manikandan
- 10.Munieeswaran @ Krishnan
- 11.Muneeskumar
- 12.Sundarkumar @ Sundar

... Petitioners/Accused 1,3 to 13

Vs

- 1.State rep., by
The Inspector of Police,
Irukkangudi Police Station,
Virudhunagar District.
(Crime No.215 of 2016)

... 1st Respondent/ Complainant

- 2.Karmegakannan

...2nd Respondent/
Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for records relating to the proceedings in S.C.No.25 of 2018 on the file of the Assistant Sessions Court, Sivakasi in Crime No.215 of 2016 on the file of the Inspector of Police, Irukkangudi Police Station, Virudhunagar District and quash the same.

For Petitioner : Mr.M.Kannan

For R1 : Mr.R.M.Anbunithi
Additional Public Prosecutor (Crl.side)

For R2 : Mr.R.Aravindraj

ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.C.No.25 of 2018 on the file of the Assistant Sessions Court, Sivakasi in Crime No.215 of 2016 on the file of the



Inspector of Police, Irukkangudi Police Station, Virudhunagar District.

2. The case of the prosecution is that the village of Chinnakollapatti persons belonging to different caste joined together and celebrated the Mariamman Temple festival by collecting tax of Rs.800/- from each persons and performed the Pongal in the temple. At that time, while the *de facto* complainant was standing in front of the Vinayagar Temple, the petitioners questioned him as to when persons belonging to all community have contributed for festival, how can they play the songs relating to a particular community alone and attacked the *de facto* complainant. Hence, the complaint.

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. Without any base, the first respondent police registered a case in Crime No.215 of 2016 for the offences under Sections 147, 148, 294(b), 323, 324, 307 and 506(ii) of IPC, as against the petitioners and the same has been taken cognizance in S.C.No.25 of 2018 on the file of the learned Assistant Sessions Judge, Sivakasi. Hence the petitioners prayed to quash the same.

4.Heard the learned counsel appearing on either sides.

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.***, 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.



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:

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"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,

<https://hcservices.ecourts.gov.in/hcservices/> 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.

8. In view of the above discussion, this Court is not inclined to quash the proceedings in SC.No.25 of 2018 on the file of the Assistant Sessions Court, Sivakasi, in Crime No.215 2016 on the file of the Inspector of Police, Irukkangudi Police Station, Virudhunagar District.

9. Accordingly, this criminal original petition is dismissed.

Sd/-

Assistant Registrar (RTI)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsd

To

1. The Assistant Sessions Judge,
Sivakasi.
2. The Inspector of Police,
Irukkangudi Police Station,
Virudhunagar District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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RD(30.05.2022) 4P 4C