



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2022

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD) No.4403 of 2022

in

Crl.M.P.(MD)No.3137 & 3139 of 2022

1. G.N.Kumar
2. Nagarajan

...Petitioners/Accused 1 & 2

Vs.

1. The State Rep. by
The Inspector of Police,
All Women Police Station,
Vadamadurai,
Dindigul District.
(In Crime No.28 of 2013)

... 1st Respondent/
Complainant

2. Santhiveeri @ Santhiya

... 2nd Respondent/
Defacto Complainant

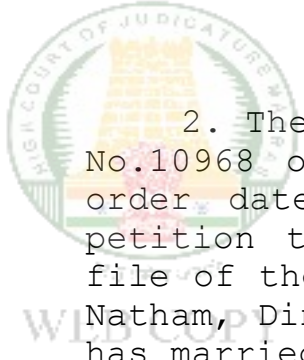
PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for records in connection with C.C.No.24 of 2014 on the file of the learned District Munsif Cum Judicial Magistrate Court, Natham, Dindigul District in connection with Crime No.28 of 2013 on the file of the Inspector of Police, All Women Police Station, Vadamadurai, Dindigul District and quash the same in respect of the petitioners as devoid of merits and illegal.

For Petitioners : Mr.S.Palani Velayutham

For Respondents : Mr.R.M.Anbunithi
No.1 Additional Public Prosecutor

ORDER

This petition has been filed seeking direction to quash the proceedings in C.C.No.24 of 2014 on the file of the learned District Munsif Cum Judicial Magistrate Court, Natham, Dindigul District.



2. The petitioners have already filed a petition in CrI.O.P(MD) No.10968 of 2014 and the same was dismissed by this Court vide order dated 21.10.2019. Again the petitioners have filed this petition to quash the proceedings in C.C.No.24 of 2014 on the file of the learned District Munsif Cum Judicial Magistrate Court, Natham, Dindigul District on the ground that the second respondent has married another person and there are living separately.

3. The learned Additional Public Prosecutor would submit that trial commenced and PW.1 to PW.4 have been examined on the side of the prosecution.

4. Heard the learned counsel appearing on either side.

5. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **CrI.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 **CrI.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 **Cr1.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. Further the petitioners have committed offence under Sections 498(A), 452, 506(ii) of IPC and Section 4 of D.P.Act

9. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.24 of 2014 on the file of the learned District Munsif Cum Judicial Magistrate Court, Natham, Dindigul District.

10. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(CS III)

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/ /2022

Sub Assistant Registrar



To

1. The Distrit Munsif cum
Judicial Magistrate Court,
Natham, Dindigul District.
2. The Inspector of Police,
All Women Police Station,
Vadamadurai,
Dindigul District.
3. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.

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SP/21/03/2022/4P/4C