



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2022

CORAM:

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

Crl.O.P.(MD) No.4231 of 2022

and Crl.M.P(MD) Nos. 3015 and 3016 of 2022

WEB COPY

1. Ganesan
2. Mallika
3. Backiyam

...Petitioners/ Accused No.1-3

Vs.

1. The State Rep.by
The Inspector of Police
Devakottai Town Police Station
Sivagangai District

... 1st Respondent/ Complainant

Alagu @ Alagesan

... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in charge sheet filed in CC No.46 of 2020 dated 19.07.2019 on the file of the learned Judicial Magistrate, Devakottai in Crime No.123 of 2019 dated 25.05.2019 on the file of the first respondent and quash the same.

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

ORDER

This petition has been filed seeking direction to quash the proceedings in CC No.46 of 2020 dated 19.07.2019 on the file of the learned Judicial Magistrate, Devakottai.

2. The defacto complainant namely Alagu @ Alagesan got three female child and his elder daughter namely Deepa who is working as a Doctor at Mylapore, Chennai and she was not having any contact or communication with the defacto complainant for some days. On Ravi Sathiah who is the brother of the defacto complainant doing agricultural work in Nallivayal Village. The said Ravi Sathiah has enquired about the elder daughter of the defacto complainant and he came to the house of the defacto complainant on 22.05.2019 then he went to the shop nearby college road. At that time, at about 10.00am., all the petitioners herein came by a car to the scene of occurrence and scolded the said Ravi Sathiah in filthy language and assaulted him with wooden sticks and had also threatened him with dire consequences. On hearing this issue the defacto complainant came to the spot and brought the said Ravi Sathiah to the hospital



then the defacto complainant gave the complaint as against the petitioners.

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 Additional Public Prosecutor 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 sides.

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.**, 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.

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:

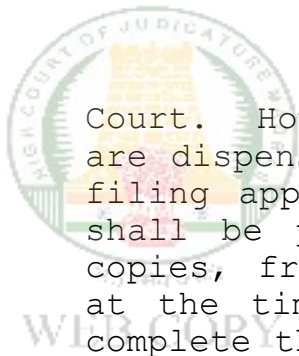
"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as 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 CC No.46 of 2020 dated 19.07.2019 on the file of the learned Judicial Magistrate, Devakottai. The petitioners are at liberty to raise all the grounds before the trial



Court. However, the personal appearance of the petitioners 2 and 3 are dispensed with and they shall be represented by a counsel after filing appropriate application. However, the petitioners 2 and 3 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 six months from the date of receipt of copy of this Order.

10. Accordingly, this criminal original petition is dismissed. Consequently connected miscellaneous petition in Crl.M.P(MD) No.3015 of 2022 stands dismissed and Crl.M.P(MD) No.3016 of 2022 stands partly allowed.

Sd/-

Assistant Registrar (W)

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/ /2022

Sub Assistant Registrar(CS)

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To

1. The Judicial Magistrate, Devakottai.
2. The Inspector of Police
Devakottai Town Police Station
Sivagangai District
3. The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai.

Crl.O.P.(MD) No.4231 of 2022
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RD(23.03.2022) 4P 4C