



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2022

CORAM:

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

Crl.O.P.(MD) No.4826 of 2022

in

Crl.M.P(MD) No. 3409 & 3410 of 2022

Dhanapal

...Petitioner/Accused No.1

Vs.

Charless Ariyamalar

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to the proceedings in CC.No.30 of 2020 on the file of the Judicial Magistrate Court, Devakottai in so far as the Petitioner herein and quash the same as illegal.

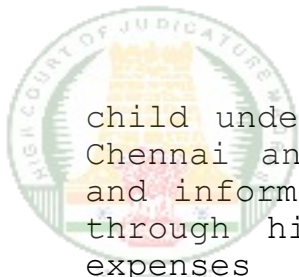
For Petitioner : Mr.N.Anandakumar

For Respondent : Mr.R.M.Anbunithi,
Additional Public Prosecutor (Crl.Side)

ORDER

This petition has been filed seeking direction to call for the records relating to the proceedings in CC.No.30 of 2020 on the file of the Judicial Magistrate Court, Devakottai in so far as the Petitioner herein and quash the same as illegal.

2. The complainant has presented this complaint before the Judicial Magistrate Court, Devakotti on behalf of her daughter namely Jeni Padmanaban residing at USA based on the power of attorney given to her against 10 persons including the petitioner herein who is arrayed as A1. The case of the prosecution is that her daughter was working at Chennai in IBM India Limited and during that time one Jeni Padmanaban got married with the petitioner herein who was working in Australia and their marriage was solemnized at Karaikudi as per the Christian rituals before the 10th accused who is a priest in Church and the marriage was solemnized in front of 3, 4, 8 and 9th accused and thereafter their marriage was registered at Sub Registrar Office, Karaikudi and they lived in Karaikudi and blessed with the female child namely Rebecca Jane. Subsequently the



child underwent open heart surgery in frontier life line hospital, Chennai and at that time the petitioner herein went to Australia and information was passed to the petitioner and he gave Rs.1 lakh through his father who is the third accused and the remaining expenses incurred by the complainant. While so the petitioner has sent a notice for divorce from Australia, for which she gave reply. Without any information the petitioner married the second accused namely Sobiya and the same was informed by one Kulanthaisamy to the complainant, due to which the complainant and her husband went to Yesu Nammodu Sabai and at that time all the accused persons were there and the marriage was solemnized in front of the 10th accused and when the same was questioned by the complainant, the 10th accused replied that her daughter's marriage was settled and closed and in the meanwhile the first accused and other accused threatened the complainant party with henchmen, hence the present complaint has been lodged.

3. The learned Counsel appearing for the petitioner would submit that the petitioner is innocent and he has not committed any offence as alleged by the prosecution.

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.**, 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**, 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."

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**, 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
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such, the points raised by the petitioner 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 CC.No.30 of 2020 on the file of the learned Judicial Magistrate Court, Devakottai . The petitioner is at liberty to raise all the grounds before the trial Court. 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.

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

Sd/-

Assistant Registrar (AS)

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/ /2022

Sub Assistant Registrar(CS)

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To

The Judicial Magistrate,
Devakottai, Sivagangai District.

Copy To

The Registrar (Judicial)
Madurai Bench of Madras High Court,
Madurai.

ORDER MADE IN
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in
Crl.M.P(MD) No. 3409 & 3410 of 2022
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PKP/22.03.2022/4P/3C