



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2022

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P(MD)No.5348 of 2022

and

Crl.M.P(MD)No.3793 of 2022

1.M.Sheik Mohideen Meeran
2.K.Raja Mohamed
3.M.S.Abdul Razak
4.P.Sheik Abubakkar Sithick .. Petitioners/Accused No.1 to 4

Vs.

1.The Commissioner of Police,
Tirunelveli City,
Tirunelveli. .. 1st Respondent/Nil
(Crime No. 191/2015)
2. The Inspector of Police,
Pettai Police Station,
Tirunelveli,
Tirunelveli District. .. 2nd Respondent/Complainant
3. R.Mahesh .. 3rd Respondent/
Defacto Complainant

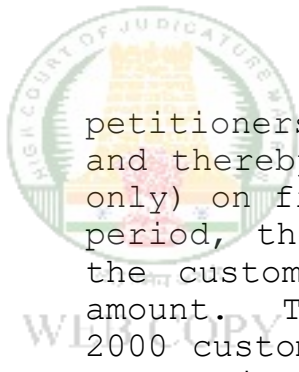
Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to quash the charge sheet in C.C.No. 414 of 2015 on the file of the learned Judicial Magistrate No.V, Tirunelveli and quash the same.

For Petitioners : Mr.R.M.Suresh
For Respondents : Mr.R.M.Anbunithi
Additional Public Prosecutor
for R.1 & R.2

ORDER

This Criminal Original Petition has been filed to quash the charge sheet in C.C.No. 414 of 2015 on the file of the learned Judicial Magistrate No.V, Tirunelveli.

2. The case of the prosecution is that the petitioners / accused are doing a business under the name of Sky Marketing at Door No.50, Choramahadevi, Pettai, Tirunelveli - 627 004. The



petitioners / accused introduced price schemes in their marketing and thereby, the customers have to pay Rs.200/- (Rupees Two Hundred only) on first week, fifth week and tenth week and for the remaining period, they have to pay Rs.100/- (Rupees One Hundred only). When the customers' name has been fell in lot, they need not pay the amount. The petitioners / accused have collected huge amount from 2000 customers and moreover, the petitioners / accused have not got any prior approval from Government Authorities. After the completion of investigation, the second respondent has filed its charge sheet before the learned Judicial Magistrate No.V, Tirunelveli.

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 second respondent police registered a case as against the petitioners and the same has been taken cognizance in C.C.No. 414 of 2015 on the file of the learned Judicial Magistrate No.V, Tirunelveli. Hence the petitioners prayed to quash the same.

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 both sides and perused the materials available on record.

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.**, 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 the 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 C.C.No. 414 of 2015 on the file of the learned Judicial Magistrate No.V, Tirunelveli. The petitioners are 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 a copy of this Order.

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

Sd/-

Assistant Registrar (CS-I)

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/ /2022

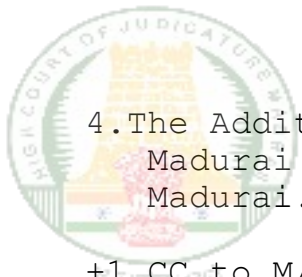
Sub Assistant Registrar(CS)

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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.V,
Tirunelveli.
2. The Commissioner of Police,
Tirunelveli City,
Tirunelveli.
3. The Inspector of Police,
Pettai Police Station,
Tirunelveli,
Tirunelveli District.



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

+1 CC to M/s.R.M.SURESH, Advocate (SR-13745[F] dated 23/03/2022)

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CrI.O.P (MD) No.5348 of 2022
and
CrI.M.P (MD) No.3793 of 2022
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NSN (CO)
KB (26.04.2022) 5P 6C