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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD) No.5743 of 2022

and

Crl.M.P(MD) No.4078 and 4079 of 2022

V.Dhas

... Petitioner

Vs.

1. The State of Tamil Nadu represented by
The Inspector of Police,
Manavalakurichi Police Station,
Kanyakumari District.
(Crime No.120/2017)

2. Sathish

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to the Charge Sheet in C.C.No. 153 of 2019 on the file of the Judicial Magistrate, Eraniel and quash the same

For Petitioners	:	Mr.C.K.M.Appaji
For Respondents	:	Mr.R.M.Anbunithi
No.1		Additional Public Prosecutor

ORDER

The Criminal Original Petition has been filed to quash the proceedings in C.C.No. 153 of 2019 on the file of the Judicial Magistrate, Eraniel.

2.The case of the prosecution is on 04.12.2016 the mother of the 2nd respondent had preferred a complaint before the 1st respondent, alleging that the petitioner called up her through mobile phone and abused her in filthy language. The complaint was subsequently compromised through the elders of the village. In order to avenge the matter, on 06.06.2017 at about 15.30 hrs, when the 2nd respondent was moving to a provisional store to purchase provisions, the petitioner herein waylaid him, abused him in filthy languages, caught hold of his shirt and slapped his right check and caused lacerated wound in his left elbow with a knife,hence the present case came to be registered.

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.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.**, 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 petitioner 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. 153 of 2019 on the file of the Judicial Magistrate, Eraniel. The petitioner is at liberty to raise all the grounds before the trial Court. However, the personal appearance of the petitioner is dispensed with and he shall be represented by a counsel after filing appropriate application. However, the petitioner 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.4078 of 2022 stands dismissed and Crl.M.P(MD) No.4079 of 2022 stands allowed.

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Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

To

1. The Judicial Magistrate,
Eraniel.
2. The Inspector of Police,
Manavalakurichi Police Station,
Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD) No.5743 of 2022
and
Crl.M.P (MD) No.4078 and 4079 of 2022
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RS (07.04.2022) 4P-4C