



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.04.2022

CORAM:

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

Crl.O.P.(MD) No.6854 of 2022

and

Crl.M.P(MD) Nos.4741 and 4742 of 2022

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1.Arumugam

2.Subbaiah

...Petitioners/Accused No.1&2

Vs.

1. The State rep. by

The Inspector of Police,

Seethaparpanallur Police Station,

Tenkasi City.

(Cr.No.55/2016)

...1st Respondent/Complainant

2. Arumugam

...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying this Court to call for the records relating to the proceedings in STC.No.464 of 2021 on the file of learned Judicial Magistrate, Alangulam, Tenkasi District and quash the same as against the Petitioners.

For Petitioners : Mr.Aayiram K.SelvaKumar

For R1

: Mr.R.M.Anbunithi

Additional Public Prosecutor

ORDER

The criminal original petition has been filed seeking to quash the proceedings in S.T.C.No.464 of 2021 on the file of the learned Judicial Magistrate, Alangulam, Tenkasi District.

2.The case of the prosecution is that the petitioners were assaulted the second respondent by hands and sticks and caused injuries, used filthy languages as against the second respondent. Therefore, the second respondent lodged a complaint and the respondent police registered FIR in Crime No.55/2016 for the offences under Sections 294(b), 323 of IPC as against the first petitioner and his son.

3.The learned Counsel appearing for the petitioner would submit that the petitioners are innocent and they have not committed any offence as alleged by the prosecution. Further, he stated that the main apprehension of the first petitioner is that his son is also an accused in the charge sheet. Without any base, the first respondent police registered a case in Crime No.55/2016 for the offence under Sections 294(b), 323 of IPC, as against the petitioners and the same



has been taken cognizance in S.T.C.No.464 of 2021 on the file of the learned Judicial Magistrate, Alangulam, Tenkasi District. 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. Further, he clarified that the son of the first petitioner is not the accused 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 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



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

Sd/-

Assistant Registrar (CS I)

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// True Copy //

/ /2022

Sub Assistant Registrar (CS)

lr

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,
Alangulam, Tenkasi District
2. The Inspector of Police,
Seethaparpanallur Police Station,
Tenkasi City.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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MGJ(28.04.2022) 4P 4C