



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.04.2022
CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

WEB COPY

CrI.O.P(MD)No.7495 of 2022

and

CrI.M.P(MD)Nos.5114 and 5115 of 2022

1.Dinakaran
2.Dhamotharan
3.Sulaina
4.Jeyalingam

... Petitioners/Accused Nos.2 to 5

Vs.

1.The State represented by
The Inspector of Police,
District Crime Branch,
Tirunelveli District.
(Cr.No.12 of 2019)

...1st Respondent/Complainant

2.Marthandan

...2nd Respondent/Defacto Complainant

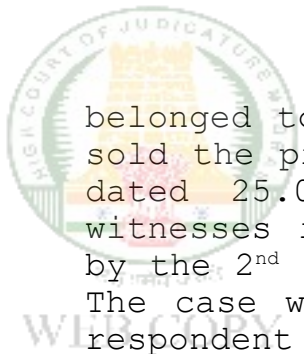
Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records and quash the proceedings in C.C.No.664 of 2021 on the file of the Special Judicial Magistrate, Special Court for Land Grabbing Cases, Tirunelveli insofar as the petitioners are concerned.

For Petitioners	: Mr.K.Jeyamohan
For Respondents	: Mr.R.M.Anbunithi
	Additional Public Prosecutor for R1

ORDER

This petition has been filed to quash the proceedings in C.C.No.664 of 2021 on the file of the Special Judicial Magistrate, Special Court for Land Grabbing Cases, Tirunelveli insofar as the petitioners are concerned.

2. The case of the prosecution is that it is claimed by the defacto complainant that the property in Survey No.2350 situated in Perungudi Village, Radhapuram Taluk, Tirunelveli District measuring to an extent of 11 cents belongs to Vinayagar Temple and accordingly he has already filed a suit in O.S.No.46 of 2009 on the file of the Additional District Munsif, Valliyoor against the 2nd and 3rd accused for relief of declaration. The said suit filed by the defacto complainant was dismissed with an observation that the property is a burial ground. While things being so, by claiming that the property



belonged to the father of the first accused, the first accused has sold the property to the 2nd and 3rd accused by registered sale deed dated 25.02.2013. The 4th and 5th accused are the attesting witnesses in the said case. Thereafter, a complaint was preferred by the 2nd respondent and that the above case came to be registered. The case was investigated and final report was filed by the first respondent police and that the same is taken cognizance by the learned Special Judicial Magistrate, Special Court for Land Grabbing Cases, Tirunelveli in C.C.No.664 of 2021 against all the accused persons including the petitioners herein for the offences under Sections 423, 467, 468, 471, 120(B), 109 and 420 of IPC.

3. The learned Counsel appearing for the petitioner would submit that the petitioner are innocent and they have not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Cr.No.12 of 2019 for the offences under Sections 423, 467, 468, 471, 120(B), 109 and 420 of IPC, as against the petitioners and the same has been taken cognizance in C.C.No.664 of 2021 on the file of the learned Special Judicial Magistrate, Special Court for Land Grabbing Cases, Tirunelveli. Hence he 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 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.664 of 2021 on the file of the Special Judicial Magistrate, Special Court for Land Grabbing Cases, 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 copy of this Order.

10. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

- 1.The Special Judicial Magistrate,
Special Court for Land Grabbing Cases,
Tirunelveli.
- 2.The Inspector of Police,
District Crime Branch, Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.K.PRABHU, Advocate (SR-20675[F] dated 22/04/2022)

Crl.O.P(MD)No.7495 of 2022

and

Crl.M.P(MD)Nos.5114 and 5115 of 2022

Date:22.04.2022

SA(18.05.2022) 4P 5C