



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.04.2022

CORAM:

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

Crl.O.P.(MD) No.7589 of 2022

and

Crl.M.P(MD) No.5175 of 2022

A.Ramasundaram

...Petitioner/Accused No.1

Vs.

1. The Inspector of Police
Sessions Court Police Station,
Tiruchirapalli District

...1st Respondent/Complainant

2. A.Siva Subramniay Pillai
Tahsildhar
Tiruchirapalli West

...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to CC No.2142 of 2019 on the file of the learned Judicial Magistrate No.II, Trichy and quash the charge sheet.

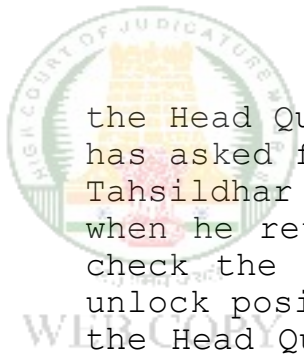
For Petitioner : Mr.D.Senthil

For Respondents : Mr.R.M.Anbunithi
No.1 Additional Public Prosecutor

ORDER

This petition has been filed seeking direction to quash the proceedings in CC No.2142 of 2019 on the file of the learned Judicial Magistrate No.II, Trichy.

2. The case of the prosecution is that on 14.05.2014, 60 bundles of free scheme Dhoti and saree was received on 28.02.2014 and there was already 8 bundles of saree and 6 bundles of dhoti were in stock and therefore 68 bundles of saree and 6 bundles of dhoti were kept in middle room in ground floor of taluk office and due to election code of conduct from 05.03.2014 the room was locked using two locks and duly sealed on 06.03.2014 and the keys were kept in the bureau in the Tahsidhar room by keeping it in a separate cover. On 13.05.2014 from 11.00 am., onwards the defacto complainant was engaged in making necessary arrangement for vote counting process for Parliamentary election and left to his quarters adjacent to Taluka officer by 01.00 hrs and instructed the jeep driver to inspect the office premises. On 14.05.2014 at about 9.50 am., when



the Head Quarters Deputy Tahsildhar came to office the jeep driver has asked for any saree which arrived earlier and the Head Quarters Tahsildhar has replied negatively and the jeep driver stated that when he returned from Saranathan College by 1.00 hrs in order to check the Taluk Office, he found that the outer gate was left in unlock position and found some bundles were left in veranda and when the Head Quarters Tahsildhar questioned him why he failed to inform the same immediately the jeep driver replied that he was in the supposition that some new dhoti and saree load arrived and therefore he failed to inform and he further submitted that he locked the door using another key. After opening the same, the Head Quarters Deputy Tahsildhar found that out of 68 saree dhoti bundles and 35 saree bundles 6 dhoti bundle were found missing and that too without breaking any of the locks in the main gate or other ground floor. Hence the 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 Invstigation 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....."

14.

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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 CC No.2142 of 2019 on the file of the learned Judicial Magistrate No.II, Trichy . 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.

10. Accordingly, this criminal original petition is dismissed. Consequently connected miscellaneous petition in Crl.M.P(MD) No.5175 of 2022 stands dismissed .

Sd/-

Assistant Registrar (P&A)

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/ /2022

Sub Assistant Registrar(CS)

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To

1. The Judicial Magistrate No.II, Trichy
2. The Inspector of Police
Sessions Court Police Station,
Tiruchirapalli District
3. The Additional Public Prosecutor
Madurai Bench of Madras High Court

ORDER MADE IN
Crl.O.P. (MD) No.7589 of 2022
and
Crl.M.P (MD) No.5175 of 2022
25.04.2022

PKP/11.05.2022/4P/4C