



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.04.2022

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P(MD)No.8372 of 2022

and

CrI.M.P.(MD) Nos.5636 and 5638 of 2022

WEB COPY

1.Davidson
2.Denson
3.Jayapaul
4.Rajan @ David

... Petitioners/Accused No.1 to 4

Vs.

1.The Inspector of Police,
Thiruvattar Police Station,
Kanyakumari District.
(In Cr.No.949 of 2011)

...1st Respondent/ Complainant

2.S.Glad Win Oliver

...2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the entire records pertaining to the proceedings in C.C.No.1320 of 2018 on the file of the Judicial Magistrate No.II, Padmanabhapuram and quash the same.

For Petitioners : Mr.B.Brijesh Kishore
For R1 : Mr.B.Thanga Aravindh
Government Advocate (CrI.side)

ORDER

This petition has been filed seeking direction to call for the entire records pertaining to the proceedings in C.C.No.1320 of 2018 on the file of the learned Judicial Magistrate No.II, Padmanabhapuram and quash the same.

2. The case of the prosecution is that the defacto complainant is a practicing Advocate in Padmanabhapuram Court. The defacto complainant's Mother and her two sisters, who are residing at Palliyadi and Palapallam, are having property in New Survey No.136/3 (Old Survey No.747) of Thiruvttar Village. The aforesaid property originally belongs to the defacto complainant's grandfather viz., Thangaraj. During his lifetime, he has executed the said property in favour of the defacto complainant and her two sisters by way of gift deed vide Document No.2077 dated 20.11.1993 through Thiruvattar, Sub-Registrar Office. The said property is situated far away from the place of defacto complainant's residence. Taking advantage of the same, the petitioners has trespassed into the said property and damaged the fence and boundary stones and encroached 3 cents of the said property. Thereafter, the defacto complainant



went to the said property and asked the encroachment with the accused. At that time, the petitioners and other accused persons abused using filthy language and also attempted to attack the defacto complainant with knife, hence the case came to be registered.

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.

4. The learned Government Advocate (Crl. Side) 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.***, wherein it is held 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.

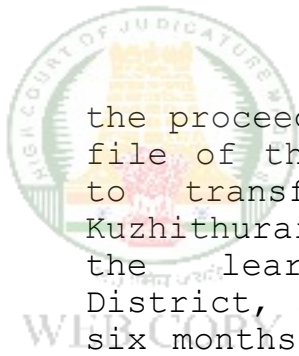
.....

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 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.1320 of 2018 on the file of the Judicial Magistrate No.II, Padmanabhapuram.

10. The defacto complainant is a practicing advocate in Judicial Magistrate No.II, Padmanabhapuram. Considering this fact,



the proceedings in C.C.No.1320 of 2018, is hereby withdrawn from the file of the learned Judicial Magistrate No.II, Padmanabhapuram and to transfer before the learned Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District. On receipt of the entire bundle, the learned Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District, shall complete the entire proceedings, within a period of six months from the date of receipt of the bundle. The petitioners are at liberty to raise all the grounds before the trial Court. However, the personal appearance of the petitioners are dispensed with and they shall be represented by a counsel after filing appropriate application. However, the petitioners 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.

11. Accordingly, this criminal original petition is dismissed. Consequently connected miscellaneous petition in Crl.M.P(MD) No.5636 of 2022 stands dismissed and Crl.M.P(MD) No.5638 of 2022 stands allowed.

Sd/-

Assistant Registrar

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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.II, Padmanabhapuram.
- 2.The Judicial Magistrate No.I, Kuzhithurai, Kanyakumari.
- 3.The Inspector of Police,
Thiruvattar Police Station, Kanyakumari District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.B.BRIJESH KISHORE, Advocate (SR-22686[F] dated 29/04/2022)

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