



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)No.13268 of 2021

and

Crl.M.P(MD)Nos.6843 & 6845 of 2021

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G.Rathnakumar

... Petitioner/Accused No.5

Vs.

1.The Superintendent of Police,
Thoothukudi District,
Thoothukudi.

...1st Respondent

2.State through its,
The Inspector of Police,
Sethunganallur Police Station,
Thoothukudi District.

... Respondent Nos.2/Complainant

3.P.Kannimarial

... 3rd Respondent/
Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records of the charge sheet in P.R.C.No.43 of 2019 on the file of the learned Judicial Magistrate, Srivaikundam and quash the same as illegal as against the petitioner.

For Petitioner	: Mr.R.M.Suresh
For RR 1 & 2	: Mr.K.Sanjai Gandhi
	Government Advocate (Crl. Side)
For R - 3	: Mr.P.Edin Brough

ORDER

This petition has been filed to quash the proceedings in P.R.C.No.43 of 2019 on the file of the learned Judicial Magistrate, Srivaikundam, as against the petitioner.

2. The case of the prosecution is that there was a civil dispute between the first accused and the defacto complainant. Hence, on 03.10.2015 at about 04.15 am., the petitioner along with other accused went to the house of the defacto complainant and knocked the door. When the defacto complainant tried to open the door, the petitioner along with other accused threatened her with dire consequences. Hence, she lodged a complaint. Based on the said complaint, the second respondent registered a case against the petitioner and other accused in Crime No.223 of 2015 for the offences under Sections 147, 148, 294(b) and 506(ii) of I.P.C and



also under Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992. The petitioner has been arraigned as fifth accused in P.R.C.No.43 of 2019.

3. The learned counsel appearing for the petitioner submitted that there has been no specific overt act as against the petitioner and he has been falsely implicated by the third respondent/defacto complainant. Hence, he prayed to quash the charge-sheet.

4. The learned Government Advocate (Criminal Side) appearing for the respondents 1 and 2 would submit that now the committal proceedings have been over and framed charges as against the petitioner and other accused persons for the offences under Sections 147, 148, 294(b) and 506(ii) of I.P.C and also under Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 in C.C.No.9 of 2022 on the file of the learned Judicial Magistrate, Srivaikundam and it is pending for trial.

5. Heard the learned counsel appearing for the petitioner, the learned Government Advocate (Criminal Side) appearing for the respondents 1 and 2 and the learned counsel appearing for the third respondent.

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 P.R.C.No.43 of 2019, which has been re-numbered as C.C.No.9 of 2022 on the file of the learned Judicial Magistrate, Srivaikundam. 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 nine 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 (AD-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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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,
Srivaikundam.
- 2.The Superintendent of Police,
Thoothukudi District,
Thoothukudi.
- 3.The Inspector of Police,
Sethunganallur Police Station,
Thoothukudi District.



4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.P.EDIN BROUGH, Advocate (SR-11590[F] dated
11/03/2022)

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