



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)No.13832 of 2020

and

Crl.M.P (MD)No.6340 of 2020

WEB COPY

C.Nepoleon

... Petitioner/Accused No.1

Vs.

1.The State represented by,
The Inspector of Police,
South Police Station
Tuticorin,
Tuticorin District.

... 1st Respondent/Complainant

2.Jeyasankar

... 2nd Respondent/
Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to C.C.No.284 of 2017 pending on the file of the learned Judicial Magistrate, Srivaikundam and quash the same as against the petitioner.

For Petitioner : Mr.K.Samidurai

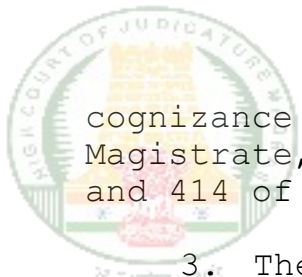
For R - 1 : Mr.B.Thanga Aravindh
Government Advocate (Crl. Side)

For R - 2 : No appearance

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.284 of 2017 on the file of the learned Judicial Magistrate, Srivaikundam, as against the petitioner.

2. The second respondent lodged a complaint alleging that on 19.03.2011, he along with his wife went to Tirunelveli for attending the marriage function and returned on the next day morning at about 08.00 a.m and he found that his house was break opened by some unknown persons and 51 sovereigns of gold jewels and a sum of Rs.10,000/- were stolen. On the basis of the complaint, the first respondent registered a case in Crime No.234 of 2011 for the offences under Sections 457 and 380 of I.P.C. As per the confession statement of the petitioner, the petitioner and his father were arraigned as accused in the said criminal case. On the basis of the final report filed by the first respondent, the same has been taken



cognizance in C.C.No.284 of 2017 on the file of the learned Judicial Magistrate, Srivaikundam for the offences under Sections 457, 380 and 414 of I.P.C.

3. The learned Government Advocate (Criminal Side) appearing for the first respondent would submit that the trial has been commenced and some of the witnesses have been examined in this case.

4. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) appearing for the first respondent.

5. 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 the Honourable Supreme Court of India has 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.

6. 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."

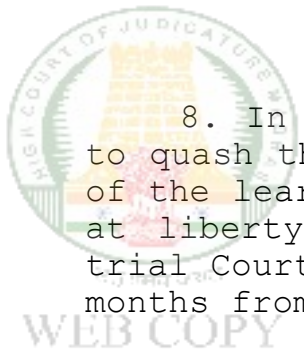
7. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, wherein the Honourable Supreme Court of India has held as follows:

"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.



8. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.284 of 2017 pending 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 six months from the date of receipt of copy of this order.

9. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ps

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 Inspector of Police,
South Police Station
Tuticorin,
Tuticorin District.

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

+1 CC to M/s.K. SAMIDURAI, Advocate (SR-18348[F] dated 12/04/2022)

Crl.O.P(MD)No.13832 of 2020
12.04.2022

RK(11/05/2022) 4P 5C