



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2022

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P(MD)Nos.14625 of 2020 and 5542 of 2021
and

Crl.M.P. (MD) .Nos.6887 of 2020 and 2749, 3178, 3180, 10830 of 2021

Crl.O.P(MD)No.14625 of 2020

1.Anusuya
2.B.Jeyashree
3.P.B.Akilashree
4.R.Ashok Kumar

...Petitioners
Vs.

1. The State represented by
The Inspector of Police,
Medical College Police Station,
Thanjavur District.
(Crime No.448 of 2018)

...Respondent/Complainant

2. Elangovan

...Respondent/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pending on the file of the learned Judicial Magistrate-II, Thanjavur in P.R.C.No.23 of 2019 and quash the same as against these petitioners.

Crl.O.P(MD)No.5542 and of 2021

1.Bharathi Mohan
2. Anandha Sekar
3. Kalai Selvi
4. Anand

... Petitioners

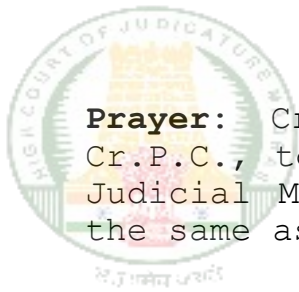
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For Petitioners : Mr.V.R.Shanmuganathan
For R-1 : Mr.B.Thanga Aravindh,
Government Advocate(Crl. Side)
For R-2 : Mr.C.Muthusaravanan
(In both cases)

COMMON ORDER

The Criminal Original Petitions have been filed to quash the proceedings in P.R.C.No.23 of 2019 on the file of the learned Judicial Magistrate-II, Thanjavur, thereby taken cognizance for the offences under Sections 147, 148, 326, 109, 120(b), 506(ii) and 307 of IPC, in Crime No.448 of 2018, as against these petitioners.

2. The case of the prosecution is that a case was registered in Crime No.448 of 2018 by the respondent police for the alleged offences under Section 120(b), 506(ii) and 307 of IPC initially. Later the offences were altered into 147, 148, 324, 109, 120(b), 506(ii) and 307 of IPC by the respondent police by alteration report dated 20.09.2018. Initially the case was registered against 6 named accused and 4 unnamed accused. Thereafter by virtue of alteration report, the first respondent have added 4 unnamed accused and added another 6 accused who were allegedly involved in the above said crime. There are totally 16 accused in the case. Subsequently, the respondent police rearranged rank of the accused and submitted an alteration report on 31.05.2019. Out of the 16 accused, 8 accused were remanded in judicial custody and released on bail. Remaining 8 accused were enlarged on anticipatory bail. The respondent police enquired as many as 29 witnesses and filed the final report before the learned Judicial Magistrate II, Thanjavur on 31.05.2019 in FR.No.88 of 2019. Due to the absence of many accused, the Judicial Magistrate has split up the case and taken the case on file in PRC.No.23 of 2019 as against the petitioners and made ready for committal. The copy of the final report was circulated to the petitioners on 06.10.2020 and the matter was posted for committal. The final report pending on the file of the learned Judicial Magistrate is illegal and violated the provisions of Cr.P.C. Hence, it was challenged by the petitioners under Section 482 of Cr.P.C.

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. Without any base, the first respondent police registered a case in Crime No.448 of 2018 for the offences under Sections 147, 148, 324, 109, 120(b), 506(ii) and 307 of IPC, as against the petitioners and the same has been taken cognizance in PRC.No.23 of 2019 on the file of the



learned Judicial Magistrate II, Thanjavur. Hence he prayed to quash the same.

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

5. Heard Mr.V.R.Shanmuganathan, learned counsel appearing for the petitioners, Mr.B.Thanga Aravindh, learned Government Advocate (Criminal Side) appearing for the first respondent and Mr.C.Muthusaravanan, learned counsel appearing for the second 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.**, wherein, it was 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



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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**, wherein, it was 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.

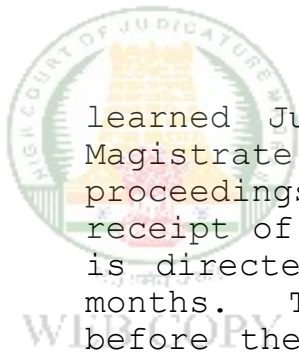
.....

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 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 PRC.No.23 of 2019 on the file of the

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learned Judicial Magistrate II, Thanjavur. The learned Judicial Magistrate No.II, Thanjavur is directed to complete the committal proceedings within a period of two (2) weeks from the date of receipt of a copy of this order. On such committal, the Trial Court is directed to complete the trial within a period of twelve (12) months. 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.

10. Accordingly, the Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

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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 No.II,
Thanjavur.
2. The Inspector of Police,
Medical College Police Station,
Thanjavur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

CrI.O.P(MD)Nos.14625 of 2020 and 5542 of 2021
21.02.2022

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