



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.17973 of 2021

and

Crl.M.P(MD)Nos.9808 & 9809 of 2021

WEB COPY

Petchimuthu Pandiyan

... Petitioner/Accused No.3

Vs.

1.The State represented by,
The Inspector of Police,
District Crime Branch,
Tirunelveli District.
(Crime No.3 of 2021)

... 1st Respondent/Complainant

2.Pothigai Kattabomman

... 2nd Respondent/
Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the impugned charge sheet in C.C.No.441 of 2021 pending on the file of the learned Judicial Magistrate Court No.I, Tirunelveli and quash the same insofar as the petitioner is concerned.

For Petitioner

: Mr.V.M.Jegadeesha Pandian

For R - 1

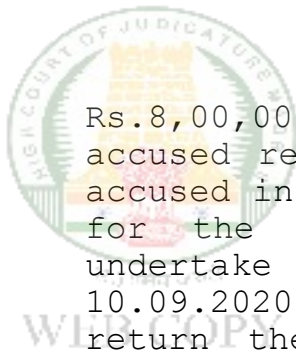
: Mr.K.Sanjai Gandhi

Government Advocate (Crl. Side)

ORDER

This petition has been filed to quash the proceedings in C.C.No.441 of 2021 pending on the file of the learned Judicial Magistrate Court No.I, Tirunelveli as against the petitioner.

2. The case of the prosecution is that the first accused purchased house plot No.10 by sale deed, dated 15.11.2018 and the second accused requested the defacto complainant to construct a house in the said plot in question. The defacto complainant approximately estimated the value of construction to an amount of Rs.80,00,000/-. On 10.04.2019, Accused Nos.1 and 2 in the presence of Gandhi and Joseph paid Rs.10,50,000/- to the defacto complainant and on 15.04.2019 paid a sum of a sum of Rs.2,00,000/-. The value of construction to an amount of Rs.37,52,594/- has been made. On repayment of Rs.14,50,000/- the accused assured to return back the house. Hence the defacto complainant through one Arangan construction of Chennai paid



Rs.8,00,000/- in the account of the second accused. The second accused repaid the said amount to the loan borrowed by the second accused in the Canfin Homes Limited, Tirunelveli Branch. Thereafter, for the balance amount of Rs.2,50,000/-, the second accused undertake to pay the same at the time of sale of the house. On 10.09.2020 when the defacto complainant requested the accused to return the balance amount, for which the petitioner made life threat. Hence, the second respondent lodged a complaint. On the said complaint, the first respondent registered the F.I.R as against the petitioner and other accused in Crime No.3 of 2021 for the offences under Sections 120(b), 406 and 420 of I.P.C. After completing the enquiry, the first respondent filed a final report and the same has been taken cognizance in C.C.No.441 of 2021 on the file of the learned Judicial Magistrate No.I, Tirunelveli.

3. Heard the learned counsel on either side and perused the materials available on record.

4. 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.

5. 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."

6. 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.



7. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.441 of 2021 pending on the file of the learned Judicial Magistrate Court No.I, Tirunelveli. The petitioner is at liberty to raise all the grounds before the trial Court. Considering the facts and circumstances of the case, the personal appearance of the petitioner is dispensed with and he shall be represented by a counsel after filing appropriate application. However, the petitioner 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. 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.

8. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// 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 Court No.I, Tirunelveli.

2.The Inspector of Police,
District Crime Branch,Tirunelveli District.

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

+1 CC to M/s.V.M.JEGADEESHA PANDIAN, Advocate (SR-12312[F] dated 15/03/2022)

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