



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.04.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)No.19193 of 2021

and

Crl.M.P(MD)Nos.10693 & 10696 of 2021

WEB COPY

N.Mohanlal

... Petitioner/Accused No.1

Vs.

1.The Inspector of Police,
District Crime Branch,
Nagercoil,
Kanyakumari District.
(Crime No.46 of 2011)

... 1st Respondent/Complainant

2.N.Suthirlal

... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.101 of 2015 on the file of the learned Judicial Magistrate No.II, Kuzhithurai and quash the same.

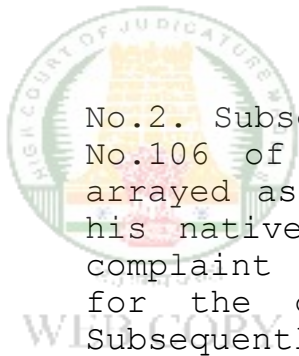
For Petitioner : Mr.H.Arumugam
For R - 1 : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)

For R - 2 : Mr.M.Kannan

ORDER

This petition has been filed to quash the proceedings in C.C.No.101 of 2015 on the file of the learned Judicial Magistrate No.II, Kuzhithurai, as against the petitioner.

2. The case of the prosecution is that the defacto complainant and the petitioner are brothers. While the defacto complainant was working in abroad, the property in Survey No.C4/10 at Nallur Village measuring to an extent of about 10.725 cents of land along with building bearing No.24/6 was purchased vide Document No.2771 of 1798, dated 01.06.1978, in the name of the defacto complainant by his father. Thereafter, the second respondent married one Stella Mary against the wish of his family members and abode at Ernakulam, Kerala. Since the second respondent was not in the native place, the property purchased in his name was released in favour of the petitioner vide Document No.463 of 1989 by their mother and sister. Thereafter, the said property along with other properties were gifted by the petitioner to his wife vide Document No.49 of 2009, dated 22.01.2009. After her death, the petitioner executed a settlement deed in favour of his son, who is arrayed as Accused



No.2. Subsequently, Accused No.2 executed a sale deed vide Document No.106 of 2011, dated 07.01.2011 in favour of Palpandi, who is arrayed as Accused No.3. When the defacto complainant came back to his native place, he found the above sale. Hence, he lodged the complaint and the same has been registered in Crime No.46 of 2011 for the offences under Sections 468, 471 and 420 of I.P.C. Subsequently, while filing charge-sheet, it has been altered into Sections 465, 466, 467, 468 and 471 of I.P.C r/w Section 34 of the Indian Penal Code, 1860. The final report was filed on 06.04.2015 and the learned Judicial Magistrate No.II, Kuzhithurai has taken cognizance of the same in C.C.No.101 of 2015.

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

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.**, wherein the Honourable Supreme Court of India 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.

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**, wherein the Honourable Supreme Court of India 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.

7. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.101 of 2015 on the file of the learned Judicial Magistrate No.II, Kuzhithurai. 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 six 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-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 No.II,
Kuzhithurai.

2.The Inspector of Police,
District Crime Branch,
Nagercoil,
Kanyakumari District.



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

+1 CC to M/s.M. KANNAN, Advocate (SR-19478[F] dated 19/04/2022)

+1 CC to M/s.H. ARUMUGAM, Advocate (SR-19893[F] dated 20/04/2022)

Order made in
Crl.O.P (MD) No.19193 of 2021
18.04.2022

nsn(CO)
TR(04.05.2022) 5P 6C