



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No.19500 of 2021

and

CRL.M.P (MD) Nos.10900 and 10902 of 2021

WEB COPY

T.Karunyamari

... Petitioner/Accused No.2

Vs

1.State rep. by

The Inspector of Police,
District Crime Branch,
Sivagangai.
(Crime No.9 of 2017)

... 1st Respondent/Complainant

2.Nirmala

... 2nd Respondent/
Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the case registered in impugned complaint in C.C.No.148 of 2019 on the file of the learned Judicial Magistrate No.II, Sivagangai in Crime No.9 of 2017 on the file of the first respondent police and quash the same as illegal.

For Petitioner : Mr.J.Lawarance

For Respondents : Mr.B.Thanga Aravindh

Govt. Advocate (Crl. Side) for R1

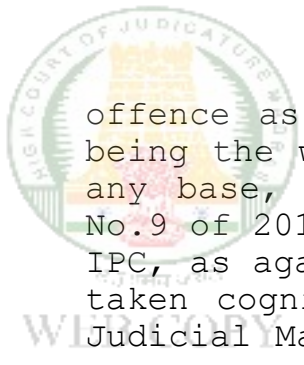
Mr.S.Sarvagan Prabhu for R2

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in in C.C.No.148 of 2019 on the file of the learned Judicial Magistrate No.II, Sivagangai, thereby taken cognizance for the offences under Sections 406, 420 and 120(b) of IPC, in Crime No.9 of 2017, as against this petitioner.

2. The case of the prosecution is that the first accused, who is the husband of the petitioner herein was introduced to the defacto complainant through her friend and the first accused promised her that he would secure lucrative job for her husband. Believing his words, the defacto complainant and other victims totally paid a sum of Rs.20 Lakhs on various dates through bank and on cash. However, the petitioner and the first accused failed to secure job for the defacto complainant's husband as well as other victims. Hence, the defacto complainant lodged the present complaint.

3.The learned Counsel appearing for the petitioner would submit that the petitioner is innocent and she has not committed any



offence as alleged by the prosecution. He further submitted that being the wife of the first accused, she has been roped in. Without any base, the first respondent police registered a case in Crime No.9 of 2017 for the offences under Sections 406, 420 and 120(b) of IPC, as against the petitioner and her husband and the same has been taken cognizance in C.C.No.148 of 2019 on the file of the learned Judicial Magistrate No.II, Sivagangai. Hence he prayed to quash the same.

4.The learned Additional Public Prosecutor would submit that the trial has been commenced and some of the witnesses have been examined in this case.

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

6.It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **CrI.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 **CrI.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 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 C.C.No.148 of 2019 on the file of the learned Judicial Magistrate No.II, Sivagangai. 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.

10.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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To

1.The Judicial Magistrate No.II,
Sivagangai.

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

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

+1 CC to M/s.J.LAWRANCE, Advocate (SR-12838[F] dated 18/03/2022)

+1 CC to M/s.S.SARVAGAN PRABHU, Advocate (SR-13096[F] dated 18/03/2022)

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MGJ(07.04.2022) 4P 6C