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Crl.O.P.(MD)No.20885 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2022

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)No.20885 of 2021

&

Crl.M.P. (MD)Nos.11991 & 11992 of 2021

Kingsley Jebasingh

...Petitioner/Accused No.9
Vs.

1. The Inspector of Police,
B1 Nagar Police Station,
Ramanathapuram.

...1st Respondent/Complainant

2.Jesudass

...2nd Respondent/
Defacto Complainant/Informant

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C.to call for the records pertaining to the P.R.C No.24 of 2020 on the file of the Judicial Magistrate No.1, Ramanathapuram, quash the same.

For Petitioner : Mr.A.Robinson

For Respondent : Mr.K.Sanjai Gandhi
Government Advocate (Criminal Side)

ORDER

This Criminal Original Petition has been filed to call for the entire records connected with the P.R.C No.24 of 2020 on the file of the learned Judicial Magistrate No.1, Ramanathapuram and to quash the same.

2.The case of the prosecution is that on 23.04.2016, near Ramanathapuram Railway entrance, the accused persons A1 to A7 were threatening the public with dire consequences. On enquiry, it is found that all the accused persons were planned to murder one Rajasekar, Ilanchezhian and to commit dacoity, in order to grab the property.

3.The learned Counsel appearing for the petitioner would submit that the petitioner is 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.182 of 2016 for the offences under Sections 399 IPC, 25(1A) Arms Act, r/w 120(b) IPC, as against the accused persons and the same has been taken cognizance in P.R.C.No.24 of 2020 on the file of the learned Judicial Magistrate No.1, Ramanathapuram. Hence he prayed to quash the same.



4.The learned Government Advocate (Crl.Side) would submit that the respondent police completed investigation and also filed final report before the learned Judicial Magistrate No.1, Ramanathapuram and taken on file as PRC No.24 of 2020.

5.Heard both sides and perused the materials available on record.

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.**, 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 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."

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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 petitioner 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 P.R.C.No.24 of 2020 on the file of the learned Judicial Magistrate No.I, Ramanathapuram. The petitioner is at liberty to raise all the grounds before the trial Court. Considering the age of the petitioner, 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 learned Judicial Magistrate No.I, Ramanathapuram is directed to complete the committal proceedings in PRC No.24 of 2020, within two weeks, from the date of receipt of a copy of this order, if not already



committed. The trial Court is directed to complete the trial within a period of six months, thereafter.

10. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar (CS)

PNM

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.1,
Ramanathapuram.
2. The Inspector of Police,
B1 Nagar Police Station,
Ramanathapuram.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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MGJ(24.03.2022) 4P 4C