



Crl.O.P.(MD)No.21942 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.12.2022**

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.21942 of 2022

and

Crl.M.P.(MD)No.15464 of 2022

1.K.Gopalakrishnan

2.Manoj

... Petitioners

Vs.

1.The Inspector of Police,
Eraniel Police Station,
Kanniyakumari District.
(Crime No.806 of 2016)

2.Joys

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to charge sheet in C.C.No.46 of 2019 on the file of learned Judicial Magistrate, Eraniel and quash the same as illegal as far as against this petitioners concerned.

For Petitioner : M/s.A.Dharani

For R1 : Mr.SS.Madhavan
Government Advocate (Crl. Side)



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ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., to call for the records in C.C.No.46 of 2019 pending on the file of the learned Judicial Magistrate, Eraniel and quash the same.

2. It is evident from the records that FIR came to be registered in Crime No.806 of 2016 for the offences under Sections 279 and 337 IPC and Section 187 of the Motor Vehicles Act, 1988 and after completing the investigation, the first respondent has laid the final report for the offences under Sections 279 and 304(A) IPC and Section 187 of the Motor Vehicles Act, 1988 and the case was taken on file in C.C.No.46 of 2019 and is pending on the file of the Judicial Magistrate Court, Eraniel.

3. The learned Government Advocate (Criminal Side) appearing for the first respondent would submit that after initial questioning, now the case stands posted for examination of L.W.1 to L.W.5.

4. The learned counsel appearing for the petitioner would submit that there is no eye witness to the occurrence, that the deceased fell down



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from the bus through foot board and that therefore, Section 304(A) IPC is not made out. The above aspects cannot gone into and is a matter for trial.

5. At this juncture, it is necessary to refer 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.***, and the relevant passages are extracted hereunder:-

"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.



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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.”

6. The Hon'ble Supreme Court, while dealing with 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



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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.”

7. The Hon'ble Apex Court in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & another** has 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 the case on hand and as such, the points raised by the petitioners cannot be considered by this Court under Section 482 Cr.P.C.

8. Considering the above and the legal position above referred, this Court concludes that the Criminal Original Petition is devoid of merits and is liable to be dismissed.



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9. In the result, this Criminal Original Petition stands dismissed.

However, the trial Court is directed to complete the trial and dispose of the case as expeditiously as possible, preferably, within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

13.12.2022

Index : Yes / No
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K.MURALI SHANKAR,J.

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To

- 1.The Inspector of Police,
Eraniel Police Station,
Kanniyakumari District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
Crl.O.P.(MD)No.21942 of 2022
and
Crl.M.P.(MD)No.15464 of 2022

Dated: 13.12.2022