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Crl.O.P.No.27518 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2023

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THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.27518 of 2016
and Crl.M.P.Nos.14017 and 14018 of 2016

1. T.Arunachalam
2. Bisani Malleshwara Rao ... Petitioners

-Vs-

1. State represented by
The Inspector of Police,
Kanchi Taluk Police Station,
Kanchipuram District.
(Crime No.564 of 2016)

2. Bharathi ... Respondents

Prayer:- Criminal Original Petition filed under Section 482 of Cr.P.C to call for all the records and quash all the proceedings in C.C.No.28 of 2016 on the file of the Learned Judicial Magistrate-II, Kancheepuram in Crime No.564 of 2016 on the file of the Inspector of Police, Kanchi Taluk Police Station, Kanchi Taluk, Kancheepuram District.

For Petitioners : Mr.V.Raveen Jose
for Mr.S.C.Pratheep Ashok Kumar

For R1 : Mr.A.Gopinath
Government Advocate(Crl.Side)



Crl.O.P.No.27518 of 2016

WEB COPY

ORDER

This Criminal Original Petition has been filed to quash the proceedings in PRC.No.28 of 2016 on the file of the learned Judicial Magistrate-II, Kancheepuram.

2. Heard the learned counsel for the petitioners and the learned Government Advocate(Crl.Side) for the first respondent and perused the materials available on record.

3. On the complaint lodged by the second respondent, the first respondent filed an FIR in Crime No.564 of 2016 for the offences under Sections 120-B, 147, 447, 294(b), 387, 114, 109, 506(ii) IPC r/w Section 4 of TNPHW Act, 1998 and Section 3(1) of TNPPDL Act, 1992. After completion of investigation, the first respondent filed a final report which is pending for committal in P.R.C.No.28 of 2016 on the file of the learned Judicial Magistrate-II, Kancheepuram. The petitioners are arrayed as A9 and A10. They filed this petition to quash the proceedings, on the ground that other persons who were the master brain behind the crime were not implicated as accused.



4. Even according to the case of the prosecution, the petitioners had planned to purchase the land ad-measuring 200 Acres in Kancheepuram and they have a proposed plan for constructing small housing units. They had approached the other accused persons to purchase the land for their proposed project. Therefore, they have nothing to do with the crime as alleged by the prosecution.

5. A perusal of records revealed that the second respondent lodged a complaint alleging that the accused persons namely, Murugan, Krishnamurthy and Kanniyappan have asked him to give his land to another accused. The second respondent refused to sell his land. While being so, on 19.06.2016, the said accused persons trespassed into his property with JCB and laid road on the agricultural land. When the defacto complainant tried to stop them, all the accused persons threatened him with dire consequences. They also threatened to sell his land. Therefore, there are specific averments and allegations in order to attract those offences. Now, for the past seven years it is pending for committal without any progress.

6. In this regard, 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:-

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" 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 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**, 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 are mixed question of facts and it cannot be considered in a quash petition under Section 482 Cr.P.C.



Crl.O.P.No.27518 of 2016

WEB COPY

9. That apart, the provisions of inherent jurisdiction under Section 482 Cr.P.C can be invoked only to be meet out the ends of justice and to prevent the abuse of process of law.

10. The learned counsel appearing for the petitioners submitted that the first petitioner died and the entire charges as against the first petitioner itself is abated.

11. Accordingly, this Criminal Original Petition stands dismissed as abated as against the first petitioner and this Court is not inclined to quash the proceedings in PRC.No.28 of 2016 on the file of the Learned Judicial Magistrate-II, Kancheepuram. Accordingly, this Criminal Original Petition is dismissed as against the second petitioner. Consequently, connected Miscellaneous Petitions are closed.

06.10.2023
(2/3)

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
rjr/mn



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Crl.O.P.No.27518 of 2016

G.K.ILANTHIRAIYAN, J.

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To

1. The Judicial Magistrate-II, Kancheepuram.
- 2.The Inspector of Police,
Kanchi Taluk Police Station,
Kanchipuram District.
- 3.The Public Prosecutor,
High Court, Madras.

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