



Crl.O.P.No.7726 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2023

CORAM:

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

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and

Crl.M.P.No.5104 of 2021

Malarkodi

.... Petitioner

Vs

1. The State,
Represented by Inspector of Police,
75, Trichy Main Road, Kamaraj Nagar,
Namakkal, Tamil Nadu 637 001.

2. N.Gobinath

3. Mallika

(R3 impleaded as per order in
Crl.M.P.No.8384 of 2021 in
Crl.O.P.No.7726 of 2021 dated
07.09.2021)

.... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to charges framed in C.C.No.681 of 2019 in FIR No.35 of 2019 dated 05.11.2019 pending before the Judicial Magistrate No.I, Namakkal and quash the same against the petitioner/5th accused.

For Petitioner

For R1

For R2

For R3

: Mr.Nithyaesh Natraj

: Mr.A.Gopinath

Government Advocate (Crl.Side)

: Mr.K.Madhubalan

: Mr.D.Sivakumaran



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ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.681 of 2019 on the file of the Judicial Magistrate No.I, Namakkal.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The case of the prosecution is that the first accused had conducted a chit fund group without any proper license and had failed to repay money to the victims. All the accused persons had canvassed people in and around Namakkal to join the chit fund group and they had also promised to pay higher interest. After collection of huge amount from the general public, the second accused converted the liquid fund and to purchased the house property. The other accused persons had also purchased the properties from the amount collected by the accused persons from the general public.



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4. There are totally seven accused as per the FIR for the offences under Sections 120B, 406 and 420 of IPC. After completion of investigation, the first respondent filed final report as against three accused persons, in which the petitioner is arrayed as A3.

5. The learned counsel for the petitioner would submit that she is a permanent resident of Malaysia from 2007. No property was purchased by her so far. Therefore, she has nothing to do with the allegations as alleged by the prosecution. In fact, the mortgage deed was executed in favour of the first accused along with her parents. Even then, the prosecution left her parents in the final report without any reason. Further, no one has spoken about the overt act of the petitioner.

6. A perusal of the documents and the statement recorded under Section 161 of Cr.P.C reveals that the first accused is none other than the own sister of the petitioner and the second accused is the relative of the petitioner. The petitioner received a sum of Rs.8,37,86,735/- from the general public and thereafter, she failed to repay the same. The first accused illegally conducted chit fund without any license. Thereafter,



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the first respondent filed an application in CMP No.7386 of 2022 before the Trial Court for further investigation and the same was allowed on 15.02.2023. After filing of final report on 09.06.2023, another sum of Rs.2,94,10,280/- was cheated by the accused persons. Though the first accused had executed a mortgage deed in favour of the petitioner after receiving certain amounts, the said property was purchased only from the crime proceeds. That apart, the petitioner had purchased eleven properties by way of registered sale dated dated 01.11.2011 including two mortgage deeds dated 14.08.2019 and 20.08.2019.

7. Further, on perusal of the confession statement revealed that only from the crime proceeds she had purchased so many properties and she also purchased jewels totally 300 sovereigns. Therefore, all the accused persons have committed very serious offence as against the Society. There are specific allegations as against the petitioner in order to attract the offences under Sections 120B, 406 and 420 of IPC.

8. 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***



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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.



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9. 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



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Court, is completely incorrect and uncalled for.”

10. 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.

.....



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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.

11. In view of the above, this Court is not inclined to quash the proceedings in C.C.No.681 of 2019 on the file of the Judicial Magistrate No.I, Namakkal. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

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Internet: Yes
Index : Yes/No
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To

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1. The Judicial Magistrate No.I,
Namakkal.
2. The Inspector of Police,
75, Trichy Main Road, Kamaraj Nagar,
Namakkal, Tamil Nadu 637 001..
3. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN. J.

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