



Crl.O.P.No.9858 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.05.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.K.IYANTHIRAIYAN

Crl.O.P.No.9858 of 2023

and

Crl.M.P.Nos.6483 and 6484 of 2023

1.Kaliyappan

2.Ayyammal

3.Lavanya

...Petitioners

Vs.

1.The State represented by
The Inspector of Police,
Uthukuli Police Station
Thiruppur District.
(Crime No.656 of 2021)

2.Sivasundari

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. Praying to call for the records in connection with charge sheet in S.T.C.No.25 of 2022 on the file of the learned District Munsif cum Judicial Magistrate Court, Uthukuli and quash the same.

For Petitioners : Mr.P.Thinesh
For R-1 : Mr.N.S.Suganthan
Government Advocate (Criminal side)



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ORDER

This Criminal Original Petition is filed to call for the records in connection with charge sheet in S.T.C.No.25 of 2022 on the file of the learned District Munsif cum Judicial Magistrate Court, Uthukuli and quash the same.

2. The case of the prosecution is that, due to dispute with regard to defecation by the pet dog raised by the defacto complainant, there arose a wordy quarrel between the defacto complainant and the accused persons. It is also alleged that the accused persons abused the defacto complainant in filthy language and also assaulted him and caused injuries to the defacto complainant. Hence, the complaint.

3. The learned Counsel appearing for the petitioners would submit that the petitioners are innocent persons 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.656 of 2021 for the offences under Sections 294(b) and 323 of IPC, as against the petitioners and the same has been taken cognizance in S.T.C.No.25 of 2022, on the file of the District Munsif-cum-Judicial Magistrate Court, Uthukuli. Hence he prayed to quash the same.



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4. The learned Government Advocate (CrI.Side) would submit that the trial has been commenced. Thus, he prayed for dismissal of this petition.

5. In this regard, 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.

6. 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.”

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

8. In view of the above discussion, this Court is not inclined to quash the proceedings in S.T.C.No.25 of 2022 on the file of the learned District Munsif cum Judicial Magistrate Court, Uthukuli.

9. Accordingly, this Criminal Original Petition is dismissed. The personal appearance of the petitioners in S.T.C.No.25 of 2022 on the file of the learned District Munsif cum Judicial Magistrate Court, Uthukuli is dispensed with. The connected miscellaneous petition in Crl.M.P.No.6484 of



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2023 is allowed. Crl.M.P.No.6483 of 2023 is closed.

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gd

Internet :Yes

Index :Yes/No

To:

- 1.The District Munsif cum Judicial Magistrate Court,
Uthukuli.
- 2.The Inspector of Police,
Uthukuli Police Station
Thiruppur District.
- 3.The Public Prosecutor,
High Court of Madras.

G.K.IIANTHIRAIYAN, J.



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