



Crl.O.P.No.22904 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023

CORAM:

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

Crl.O.P.No.22904 of 2021
and Crl.M.P.Nos.12506 and 12507 of 2021

1. Rajamani
2. Malliga
3. Sathya Priya

... Petitioners

Vs.

1. State represented by its
The Inspector of Police,
District Crime Branch,
Krishnagiri District.

2. Neethidevan

... Respondents

PRAYER:- Criminal Original Petition filed under Section 482 of Cr.P.C praying to call for the records in C.C.No.77 of 2020 pending on the file of the Judicial Magistrate No.II, Krishnagiri and quash the same.

For Petitioners : No appearance

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

For R2 : No Appearance



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ORDER

This Criminal Original Petition has been filed calling for the records in C.C.No.77 of 2020 pending on the file of the learned Judicial Magistrate No.II, Krishnagiri and to quash the same.

2. The case of the prosecution is that the accused persons A1 to A3 collected a sum of Rs.43,55,000/- from 27 victims to get job in TNEB. Thereafter, they failed to get any job and as such, the victims approached the accused. At the time of receiving money, the other accused viz., father, mother and elder sister of the first accused were also present and they also assured to get job. They also executed a letter of acknowledgment and assured to return the money. Thereafter, they had cheated the entire amount to the poor victims. Hence, the complaint.

3. On receipt of the said complaint, the first respondent registered an FIR in Crime No.23 of 2018 for the offences under Sections 34, 120B and 420 of IPC. After completion of investigation, final report has been filed and the same has been taken cognizance in C.C.No.77 of 2020 on the file of the Trial Court.



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4. The petitioners raised grounds that they are only family members and they have nothing to do with the allegations levelled against the first accused.

The first accused, being the son of first and second petitioners herein had collected amount from the victims to get job. However, he cheated them. The petitioners are no way connected with the first accused.

5. A perusal of records and statement recorded under Section 161 Cr.P.C revealed that the petitioners were also present at the time of receiving money from 27 victims. They also assured to get job for them to the post of Tutor as well as in the department of TNEB. When the first accused could not get any job for them, the victims approached the accused. The petitioners, being parents and elder sister of the first accused had assured them to get job and they also acknowledged their liability and had executed document, thereby assured to return the money. However, they failed to return the amount, thereby committed very serious offence as against the society by conspiring with other accused persons. Further, there are specific overtact and allegations as against all the petitioners to attract the offence under Section 420 of IPC.



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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:-

" 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



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issue in **Crl.A.No.1572 of 2019** dated 17.10.2019 in the case of **Central**

Bureau of Invstigation 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:



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"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.



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

10. Therefore, this Court is not inclined to quash the proceedings in C.C.No.77 of 2020 pending on the file of the Judicial Magistrate No.II, Krishnagiri. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous petitions are closed.

30.10.2023

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
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G.K.ILANTHIRAIYAN, J.



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To

1. The Judicial Magistrate No.II, Krishnagiri..
2. The Inspector of Police,
District Crime Branch,
Krishnagiri District.
- 3.The Public Prosecutor
Madras High Court.

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