



Crl.O.P.No.9925 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.05.2023

CORAM:

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

Crl.O.P.No. 9925 of 2023
and Crl.M.P.No. 6534 of 2023

1. H.Methaji Begam

2. A.Amjad Khan

...Petitioners/Accused 3 & 5

-Vs-

1.State of Tamil Nadu
Rep. by Inspector of Police,
Crime Branch C.I.D – South
Nagapattinam District.

2. The Deputy Superintendent of Police,
District Crime Branch, Nagapattinam. ... Respondent/ Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records relating to C.C.No.693 of 2022 on the file of Chief Judicial Magistrate, Nagapattinam, Nagapattinam District and quash the same as against the petitioners.

For Petitioners : Mr. S.Giritharan

For Respondents : Mr.N.S.Suganthan
Government Advocate (Crl. Side), for R1



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ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.693 of 2022 on the file of Chief Judicial Magistrate, Nagapattinam, Nagapattinam District.

2. The case of the prosecution is that the defacto complainant, who was working as Sub Inspector of Police in Mayiladuthurai Police Station gave a complaint regarding malpractice in pay section for his arrears of salary increment. An FIR was registered on 17.12.2016 in Crime No.12 of 2016 for the offences under Section 409, 465, 468, 477A and 420 IPC, subsequently the same was transferred to the respondent Police wherein another FIR in Crime No. 1 of 2017 was registered on 02.01.2017. Thereafter, Charge sheet was filed by the respondent Police by altering the offences under Sections 120(b), 409, 465, 477A and 420 IPC arraying the petitioners herein as Accused 3 and 5, vide alteration report dated 24.01.2022.



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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.1 of 2017 for the offences under Sections 120(b), 409, 465, 477A and 420 of IPC, as against the petitioners and the same has been taken cognizance in C.C.No. 693 of 2022 on the file of the Chief Judicial Magistrate, Nagapattinam, Nagapattinam District. Hence he prayed to quash the same.

4. The learned Additional Public Prosecutor would submit that the trial has been commenced and some of the witnesses have been examined in this case.

5. Heard Mr.S.Giritharan, learned counsel appearing for the petitioners and Mr.N.S.Suganthan, learned Government Advocate (Crl. Side) appearing for the first respondent.



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6. It is seen that the all the accused persons have committed very serious offence against the Society and thereafter misappropriated the entire salary of other Police persons. They also misappropriated the Government money and caused wrongful loss to the Government in order to make out wrongful gain to several others. Therefore, the matter has to be gone into by full fledged trial in this regard.

7. 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



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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.

8. 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



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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.”

9. 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



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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 cannot be considered by this Court under Section 482 Cr.P.C.



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10. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.693 of 2022 in Crime No.1 of 2017 on the file of the Chief Judicial Magistrate, Nagapattinam, Nagapattinam District. The petitioners are at liberty to raise all the grounds before the trial Court.

11. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is closed.

04.05.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
jv/dsa

To

- 1.The Judicial Magistrate Court IV,
Tiruppur.
- 2.The Inspector of Police
Mangalam Police Station,
Tiruppur District.
- 3.The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN. J,

jv/dsa

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