



Crl.O.P.(MD) No..11163 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2024

CORAM

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

CRL.O.P (MD) No.11163 of 2020
and Crl.M.P(MD)No.5086 of 2020

- 1.Preeda
- 2.Esakkimuthu
- 3.V.Udaiyar
- 4.S.Ashokumar
- 5.S.Varadharaj
- 6.S.Manoharan
- 7.E.Sornamani
- 8.E.Mano
- 9.S.Banumathi
- 10.S.Pavun
- 11.A.Shanthi
- 12.S.Rajan
- 13.S.Panchavarnam

...Petitioners/Accused 1 to 13
vs.

Arputham (Died)

Subbulaxmi ...Respondent/Defacto Complainant
(Sole respondent died, legal heir is impleaded as respondent, as per order of the court dated 08.02.2024 in Crl.M.P(MD)No.1500 of 2024 in Crl.O.P (MD) No.11163 of 2020)

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, to call for the records relating to C.C.No.276 of 2019 on the file of the Judicial Magistrate Court, Valliyoor, Tirunelveli District and quash the same as illegal.



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For Petitioners : Mr.S.Vikram

For Respondent : Mr.A.S.Vaigunth

ORDER

This Criminal Original Petition is filed to quash C.C.No.276 of 2019 on the file of the Judicial Magistrate Court, Valliyoor, Tirunelveli District.

2. The learned counsel for the petitioners would vehemently submit that there are no *prima facie* materials against the petitioners herein and there are no specific overt act attributed against the petitioners. The learned counsel would further submit that there is a dispute with regard to poojariship of a temple and the defacto complainant herself has instituted a suit in O.S.No.146 of 2018 and during the pendency of the suit, the instant complaint has been filed. Therefore, filing of the present complaint is nothing but abuse of process of law and the present complaint is lodged only to wreck vengeance against the petitioners herein without there being any merits in the complaint. Hence, he prayed to quash the case in C.C.No. 276 of 2019.

3. The learned counsel for the respondent would submit that



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immediately after occurrence, they have given a police complaint and since the police did not register the complaint, they were left with no other option except to file a private complaint under Section 200 Cr.P.C. The learned counsel for the respondent would further submit that their attempt in giving the police complaint would very well indicate their plaint averments and further more, on seeing the impugned complaint there are specific overt acts attributed against each of the petitioner. He would further submit that while exercising jurisdiction under Section 482 Cr.P.C, this Court cannot go into the merits of the case and he prayed for dismissal of this petition.

4. I have given my anxious consideration to the submissions made on either side and perused the materials available on record.

5. Before this Court delves into the merits of the matter, is relevant to refer the judgment of the Hon'ble Supreme Court of India passed in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr.**, reported in **2019 (4) SCC 351** as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application



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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 the case of **Central Bureau of Investigation Vs. Arvind Khanna**, reported in **2019 (10) SCC 686** 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 case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, reported in **2019 SCC online SC 2058** 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....."

As per the above ratio, in exercising jurisdiction under Section 482 Cr.P.C, this Court cannot go into the minute details of the prosecution case and inconsistencies, contradiction, merits and demerits of the case. Here, on perusal of the complaint, there is a *prima facie* case. Here, when exercising jurisdiction under Section 482 Cr.P.C, this Court cannot interfere with the merits of the allegation.

8. Considering the above, this Court does not find any merits in this Criminal Original Petition.



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9. At this juncture, the learned counsel for the petitioners prays that the presence of the petitioners may be dispensed with before the trial court.

10. Considering the submissions made by the learned counsel for the petitioners, the presence of petitioners is dispensed with before the trial court except when their presence is specifically directed by the trial court, and during the service of copy, for questioning under Section 313 CR.P.C and while pronouncement of judgment.

11. With the above observation, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Internet:Yes./No
Index:Yes/No
CM

08.03.2024



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To

1. The Judicial Magistrate Court,
Valliyoor, Tirunelveli District
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN, J.

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