

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No. 531 of 2019
and Crl.MP.No.365 of 2019

1. S.Kudiyarasu Devi
2. S.Suresh Kumar
3. S.Ravirathinam
4. S.Rajarathinam
5. S.Shubha
6. Sajan
7. Shanthi Ravi
8. R.Nishitha
9. Magesh

.... Petitioners

Vs.

1. The State rep by
The Inspector of Police,
Team XVI, Central Crime Branch,
Vepery, Chennai - 7.

2. S.Natarajan

.... Respondents

PRAYER:

Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in Cr.No.434 of 2015 on the file of the first respondent police and quash the same.

For Petitioners: Mr.K.M.Vijayan
Senior Counsel
For Ms.R.T.Shamala

For Respondents

For R1 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor.

For R2 : Mr.C.S.Dhanasekaran

O R D E R

This petition has been filed to quash the FIR in Crime No.434 of 2015 on the file of the first respondent registered for the offence under Sections 420, 465, 467, 468, 471 r/w 120B of IPC.

2. The learned Senior Counsel appearing for the petitioners submitted that the petitioners are arraigned as A1 to A9. The second respondent foisted false case as against the petitioners and no offence has been made out as against them. He further submitted that already the ninth petitioner herein filed suit in O.S.No.461 of 2015, in which an interim injunction has been granted and the same has been suppressed by the defatco complainant and lodged this false complaint. In fact, the second respondent also filed a suit in O.S.No.481 of 2001 before the District Munsif Court, Alandhur and subsequently, it was withdrawn by him. As against the patta proceedings, the petitioners filed a writ petition in W.P.Nos.1220 and 3371 of 2014 in which, this Court ordered status quo. The above said facts were suppressed by the second respondent and false complaint has been foisted as against the petitioners.

3. Per contra, the learned counsel appearing for the second respondent submitted that the petitioners have committed offences under Sections 420, 465, 467, 468, 471 r/w 120B of IPC and to attract the said offences there are materials to connect the petitioners. He further submitted that though civil suit is pending between the parties, it is not an impediment to proceed a criminal case as against the petitioners. Therefore he prayed for dismissal of the quash petition.

4. The learned Additional Public Prosecutor would submit that the investigation is almost completed and the respondent police have only to file final report.

5. Heard Mr.K.M.Vijayan, learned Senior Counsel appearing for the petitioner, Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent and Mr.C.S.Dhanasekaran, learned counsel appearing for the second respondent.

6. The petitioners are family members and they are arraigned as accused in Crime No. 434 of 2015. The allegations as against the petitioners are that they fabricated false documents in respect of the disputed property to grab the same. It is seen from the FIR, there are specific allegations as against the petitioners and there is prima facie case made out, as such the first respondent rightly registered the First Information Report as against the petitioners. Though several proceedings are pending between the petitioners and the second respondent, the averments made in the complaint prima facie made out for registering the FIR. Therefore, it cannot be quashed and it amounts to kill the still born child.

7. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in CrI.A.No.255 of 2019

dated 12.02.2019 in the case of Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors., as follows:-

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

.....
9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged

against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

8. It is seen from the First Information Report that there is a specific allegation as against the petitioners, which has to be investigated. Further the FIR is not an encyclopedia and it need not contain all facts. Further, it cannot be quashed in the threshold. This Court finds that the FIR discloses prima facie commission of cognizable offence and as such this Court cannot interfere with the investigation. The investigating machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code. Therefore, this Court is not inclined to quash the FIR.

9. Considering the above facts and circumstances, this Court is inclined to direct the first respondent to complete the investigation and file final report in Crime No.434 of 2015 within a period of four weeks from the date of receipt of copy of this Order.

10. With the above directions, this Criminal Original Petition stands disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rts

To

1. The Inspector of Police,
Team XVI, Central Crime Branch,
Vepery, Chennai - 7.
2. The Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to Ms.R.T.Shamala, Advocate, S.R.No.36432

+5cc to Mr.C.S.Dhanasekaran, Advocate, S.R.No.36409

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and CrI.MP.No.365 of 2019

LN(CO)
CS/27/04/2019



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