

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.9266 of 2019
and Crl.M.P.No.4941 of 2019

Asif @ Mohammed Asif

... Petitioner

Vs

1.The State Represented by
The Sub Inspector of Police,
Central Crime Branch,
EDF - II, Team - 4,
Egmore, Chennai 600 007.

2.Ramesh Lalwani

... Respondents

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the proceedings against the petitioner who is arrayed as Accused-2 in C.C.No.411 of 2016 in Crime No.265 of 2013 pending on the file of the Learned Metropolitan Magistrate Court for CCB and CBCID Cases and quash the same.

For Petitioner : Mr.R.Mohandoss

For Respondent 1 : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed to call for the records pertaining to the proceedings against the petitioner who is arrayed as Accused-2 in C.C.No.411 of 2016 in Crime No.265 of 2013 pending on the file of the Learned Metropolitan Magistrate Court for CCB and CBCID Cases and quash the same.

2.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the first respondent.

3.The petitioners are arrayed as accused 2 in Crime No.265 fo 2013 for the offences punishable under Section 420 IPC r/w Section 34 of IPC by the first respondent police.

4.The learned counsel for the petitioner submitted that the respondent police without proper investigation filed a charge sheet as against these petitioners in Crime No.265 of 2013, on the file of the first respondent police. He further submitted that there are sufficient materials to show that the petitioners did not commit any offence as alleged by the prosecution. Hence, he prays to quash the proceedings in Crime No.265 of 2013.

5.It is relevant to extract the following observations made by the Hon'ble Supreme Court in the case of Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors., in CrI.A.No.255 of 2019 dated 12.02.2019, with regard to quashing of the criminal proceedings.

"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.

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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."

It is also 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. In the case on hand, the points raised by the petitioner is question of facts, which are to be raised only before the trial Court during trial. Therefore, this Court does not find any merits to quash the proceedings in C.C.No.411 of 2016. However, the trial Court is directed to complete the trial within a period six months from the date of receipt of copy of

this order.

7. Accordingly, this Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The learned Metropolitan Magistrate Court,
CCB and CBCID, Chennai.

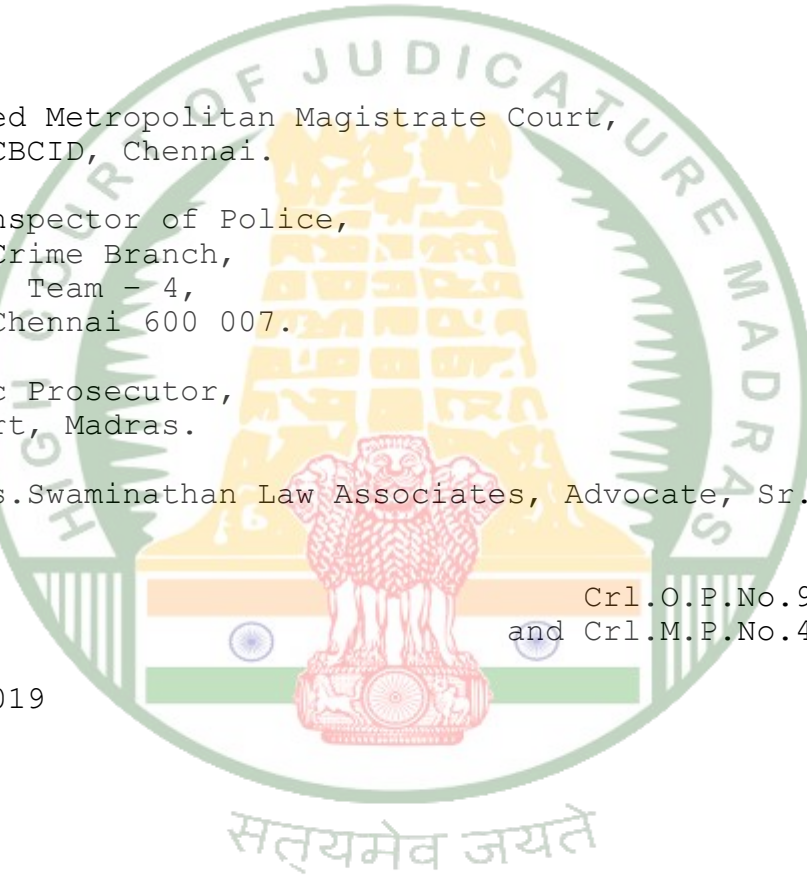
2. The Sub Inspector of Police,
Central Crime Branch,
EDF - II, Team - 4,
Egmore, Chennai 600 007.

3. The Public Prosecutor,
High Court, Madras.

+1 cc to M/s. Swaminathan Law Associates, Advocate, Sr.No. 35451

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and Crl.M.P.No.4914 of 2019

PM(CO)
CSL/29.05.2019



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