

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2019

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.5238 of 2019
and
Crl.M.P.Nos.3037 & 3039 of 2019

Karthik @ K.Karthikeyan ...Petitioner/4th Accused
Vs.

The State Rep. by
The Inspector of Police,
K-4, Anna Nagar Police Station,
Chennai-40. ...Respondent/Complainant

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to call for the entire records in C.C.No.7859 of 2017 in Crime No.1068 of 2017, on the file of the V Metropolitan Magistrate Court, Egmore and quash the final report filed against the petitioner/4th Accused is concerned.

For Petitioner : Mr.D.Senthil Kumar

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

O R D E R

This petition has been filed seeking to quash the entire proceedings in C.C.No.7859 of 2017 on the file of the V Metropolitan Magistrate, Egmore.

2.The petitioner and three others are charged for the offence under Sections 353 IPC r/w Sec 30 of Indian Arms Act r/w 34-IPC in crime No.1068 of 2017, on the file of the respondent Police.

3.The learned counsel for the petitioner pointed out that on the date of occurrence i.e., on 31.07.2017, the petitioner was not at all present in the scene of occurrence since, he met with an accident on 30.07.2017 and was admitted in the Government Hospital, Avadi and thereafter on 31.07.2017, he was taken to MIOT Hospital and thereafter a surgery was conducted

and discharged only on 10.08.2017. Therefore, he raised the ground of alibi.

4. Heard both sides.

5. The ground of alibi can be considered only during the trial and the documents have to be tested by the trial Court. 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."

6. In view of the above, this court is not inclined to grant the prayer as sought for by the petitioner. However, considering the facts and circumstances of the case, the personal appearance of the petitioner is dispensed with and he shall be represented by a counsel after filing appropriate application. The petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment. The trial Court is directed to complete the trial within a period of four months from the date of receipt of copy of the order.

7. In the result, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous petitions are also closed.
rm/rri

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
K-4, Anna Nagar Police Station,
Chennai-40.
2. The Public Prosecutor,
High Court, Madras.
3. The V Metropolitan Magistrate Court,
Egmore, Chennai.

+2CCs to Mr.D.Senthil Kumar, Advocate, SR.No.22499

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Kak (09/07/2019)