

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.7875 of 2019

and

Crl.M.P.No.4281 of 2019

1.Prakash

2.Prabhu

... Petitioners

Vs

1. State rep by
The Station House Officer,
District Crime Branch,
Coimbatore District.
(Crime No.3 of 2019)

2. Barath

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records and to quash the complaint in FIR No.3 of 2019 on the file of the respondent police.

For Petitioners: Mr.P.Maheshkumar

For R1 : Mr.C.Raghavan
Government Advocate (Crl.Side)

O R D E R

This Criminal Original Petition has been filed to quash the FIR in Crime No. 3 of 2019 for the offence under Sections 120B, 420, 406 and 66 & 66C of Information Technology Act, 2000 on the file of the first respondent police.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) for the respondents.

3.The petitioners are arrayed as accused in FIR No.3 of 2019 for the offences punishable under Sections 120(b), 420, 408, IPC and 66 & 66C of Information Technology Act by the first respondent police.

4.The learned counsel for the petitioners submitted that the respondent police without proper investigation filed a charge sheet as against these petitioners in FIR No.3 of 2019 dated 11.02.2019, on the file of the first respondent police. He further submitted that there are sufficient materials to show that the petitioner did not commit any offence as alleged by the prosecution. Hence, he prays to quash the proceedings in FIR No.3 of 2019.

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 Crl.A.No.255 of 2019 dated 12.02.2019, with regard to quashing of the criminal proceedings.

3. It is seen that there is specific allegation as against the petitioners, though it is referred under Section 156(3) Cr.P.C. There is specific allegation and averments made in the complaint. In this regard, it is relevant to rely upon the judgement and the Hon'ble Supreme Court Crl.A.No.255 of 2019 dated 12.02.2019 in the case of Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & others. Para 4,5 and 9

"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."

6. 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 agency has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

7. In view of the above discussion, this Court is not inclined to quash the FIR. Accordingly, this Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous

petition is closed. However, considering the nature of allegation the first respondent is directed to complete the investigation and file a final report within a period of three months from the date of receipt of a copy of this Order.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mpa/vsn

To

1. The Station House Officer,
District Crime Branch,
Coimbatore District.
2. The Public Prosecutor,
High Court, Madras.
3. The Section Officer,
Criminal Section, High Court, Madras.

+1 cc to Mr.P.Maheshkumar, Advocate, S.R.No.30418

CRL.O.P.No.7875 of 2019

SKV(CO)
SSM(20/05/2019).



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