

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2019

CORAM:

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

Crl.O.P.No.10686 of 2019

and

Crl.M.P.Nos.5490 and 5491 of 2019

1.M.Ratinavel,
2.C.Murugesan
3.Malarvizhi

...Petitioners

Vs.

1.The Inspector of Police,
All Women Police Station,
Arakkonam, Vellore District.

2.Vimala

...Respondents

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to call for the records and quash C.C.No.121 of 2017 now pending on the file of the learned Judicial Magistrate, Arakkonam, Vellore District.

For Petitioner : Dr.C.Babu

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

O R D E R

This petition has been filed to quash the proceedings in C.C.No.121 of 2017, pending on the file of the learned Judicial Magistrate, Arakkonam, Vellore District.

2.The petitioners are arrayed as accused in Crime No.9 of 2014 for the offences punishable under Sections 498(a), 323, 342, 354 and 506(i) of IPC of the basis of complaint given by the 2nd respondent herein. After detailed investigation, the 2nd respondent filed a charge sheet in C.C.No.121 of 2017 before the learned Judicial Magistrate, Arakkonam, Vellore District.

3.On perusal of records, it is seen that the dispute between the petitioners and the defacto complainant is with regard to matrimonial dispute. It is seen that the 1st petitioner/husband has filed HMOP.No.17 of 2014 to dissolve the marriage between the petitioner and the 2nd respondent and the same was allowed by an order dated 24.07.2017 by the learned Subordinate Judge, Thiruthani and no appeal has been filed as against the order by the 2nd respondent. Under such circumstances, the petitioners

have filed the present petition to quash the proceedings in C.C.No.121 of 2017, pending on the file of the learned Judicial Magistrate, Arakkonam, Vellore District.

4. The learned counsel for the petitioner submitted that the respondent police without proper investigation filed a charge sheet as against these petitioners in C.C.No.121 of 2017, on the file of the learned Judicial Magistrate, Arakkonam, Vellore District. 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 C.C.No.121 of 2017.

5. It is relevant to extract the following observations made by the Hon'ble Supreme Court in the case of *Sau. Kamal Shivaji Pokarnekhar 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.

"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. On perusal of the complaint, it is seen that there are specific allegations as against the petitioners to attract the offences under Sections 498(a), 323, 342, 354 and 506(i) of IPC. Hence, this Court does not find any merits to quash the proceedings in C.C.No.121 of 2017. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are also closed.

7. However, considering the age of the petitioners 2 and 3, their personal appearance before the trial Court in connection with C.C.No.121 of 2017 is dispensed with and they shall be represented by a counsel after filing appropriate application. The petitioners 2 and 3 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 learned Judicial Magistrate, Arakkonam, is directed to complete the trial within a period three months from the date of receipt of copy of this order.

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

To

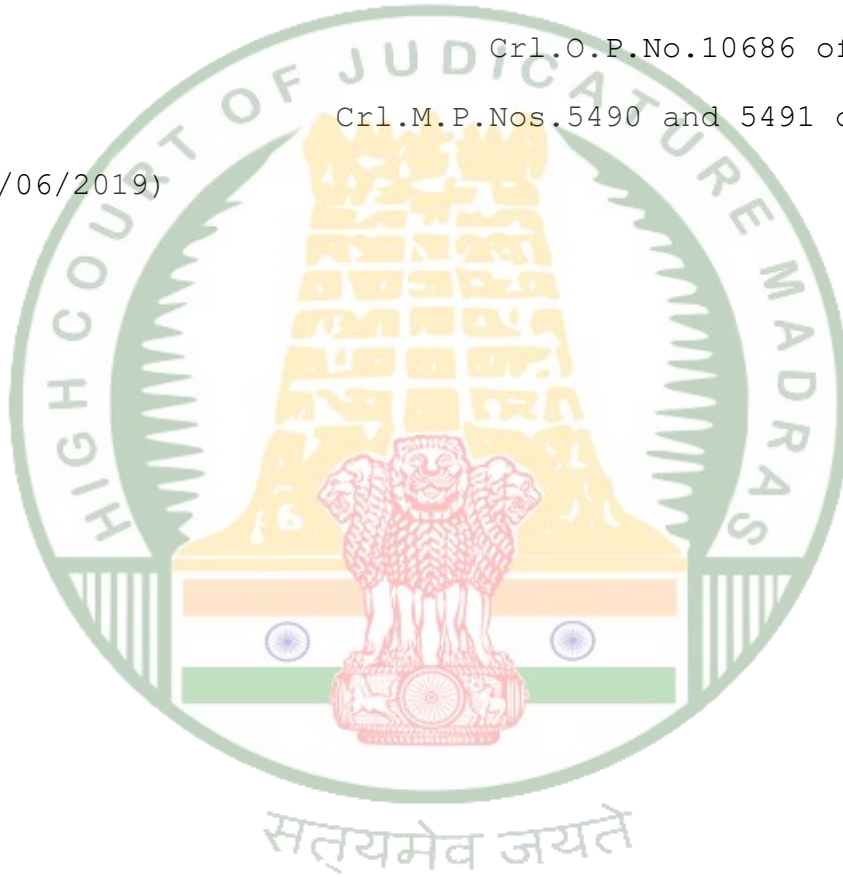
1.The Judicial Magistrate,
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High Court, Madras.

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A.SK(10/06/2019)



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