

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2019

CORAM:

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

Cr1.O.P.No.8988 of 2019
and Cr1.M.P.No.4777 of 2019

Dr.R.Selvammal

...Petitioner

Vs.

1.The State rep. by its
Inspector of Police,
Tiruvannamalai Town Police Station,
Tiruvannamalai District.
(Crime No.228 of 2018)

2.Navaneetha Dhanalakshmi ...Respondents

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to call for the records relating to F.I.R. in Crime No.228 of 2018 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.Om Prakash
Senior Counsel for S.Kumaradevan

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

O R D E R

This petition has been filed to quash the first information report in Crime No.228 of 2018 on the file of the first respondent.

2. The petitioner was arrayed as an accused in Crime No.228 of 2018 for the offences punishable under Sections 353, 312 of IPC and Section 7(3) of the Medical Termination of Pregnancy Act, 1971 on the basis of complaint given by the 2nd respondent herein.

3.On perusal of records, it is seen that on 31.01.2018, when the officials of the National Investigation and tracking, Anti agency for Gender Selection working under the Ministry of Health and Family Health Department went to Sri Bhuvaneshwari Hospital

at Tiruvannamalai Town, owned by the petitioner herein, found that the petitioner has involved in illegal termination of pregnancy. It is also alleged that the petitioner prevented the officials from verifying the records at the time of inspection. It is also alleged that during inspection they found some equipment with regard to the termination of pregnancy and some documents related to the termination of pregnancy. Hence, the 2nd respondent lodged a complaint before the 1st respondent police and a case was registered as against the petitioner in Crime No.228 of 2019. Under such circumstances, the petitioner herein has filed the present petition to quash the F.I.R. In Crime No.31 of 2019.

4.The learned counsel for the petitioner submitted that the respondent police without proper investigation registered an F.I.R as against the petitioner in Crime No.228 of 2019. 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 F.I.R.

5.The learned Additional Public Prosecutor submitted that investigation is still pending.

6.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."

7. 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. Therefore, this Court does not find any merits to quash the investigation in Crime No.228 of 2018. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is also closed. However, the 1st respondent is directed to complete the investigation and file a final report within a period of three months from the date of receipt of copy of this order.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

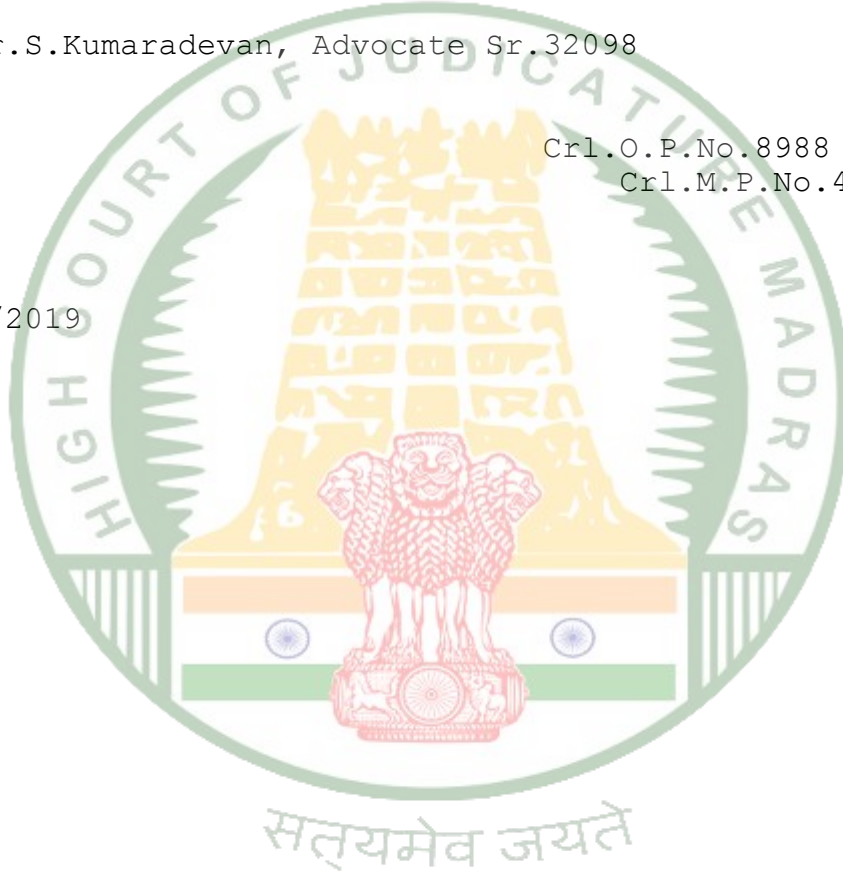
1. The Inspector of Police,
Tiruvannamalai Town Police Station,
Tiruvannamalai District.
(Crime No.228 of 2018)

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Kumaradevan, Advocate Sr.32098

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