

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2019

CORAM:

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

CRL.O.P.No.8127 of 2019

and

CrI.M.P.Nos.4389 & 4390 of 2019

Azizulkarim

... Petitioner

Vs.

1.State Rep. by the Sub-Inspector of Police,
15th Team, Central Crime Branch,
Egmore, Chennai - 600 008.
CCB. (XV). Cr.No.76 of 2006

2.B.Shahjehan

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the entire records and quash the Charge Sheet in C.C.No.10020 of 2017 on the file of the Hon'ble Metropolitan Magistrate, (CCB - CBCID Cases) Egmore.

For Petitioner : Mrs.G.Lavanya

For Respondent 1: Mr.C.Raghavan,

Government Advocate(Crl. Side)

O R D E R

This petition has been filed to quash the proceedings in C.C.No.10020 of 2017 on the file of the learned Metropolitan Magistrate, (CCB - CBCID Cases) Egmore for the offences under Sections 468, 471, 474, 476, 420 r/w 34 of I.P.C.

2. The learned Counsel appearing for the petitioner would submit that the petitioner is an innocent person and he has not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.2270 of 2005 for the offences under Sections 468, 471, 474, 476, 420 r/w 34 of I.P.C, as against the petitioner and filed charge sheet in C.C.No.10020 of 2017 before the learned Metropolitan Magistrate, (CCB - CBCID Cases) Egmore. Hence he prayed to quash the same.

3. The learned Government Advocate (Crl. Side) would submit that there are specific allegations as against the petitioner to attract the offences under Sections 406 & 420 of IPC. He further submitted that all the points raised by the petitioner has to be

considered only during trial. Therefore, he prayed to dismiss this petition.

4. Heard, the learned counsel appearing for the petitioner as well as learned Government Advocate (Crl. Side) appearing for the first respondent.

5. It is seen from the charge there are specific averments and allegations to attract the offences as against the petitioner. Further it is also seen that there are materials to connect the petitioner to the offences. More over all the points raised by the petitioners have to be considered only during the trial. The petitioners at liberty to raise all the points before the Court below during the trial.

6. In this regard, it is also relevant to rely upon the Judgment of 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 and the relevant paragraphs are extracted hereunder:

"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."

The above referred judgment is squarely applicable to the facts of this case.

7. All the points raised by the petitioner are the question of facts and those points have to be considered only during trial. Therefore, this Court finds no ground to quash the charge sheet.

8. Accordingly, the Criminal Original Petition is dismissed. However, the petitioner is at liberty to raise all the grounds before the Trial Court.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Metropolitan Magistrate, (CCB - CBCID Cases) Egmore.

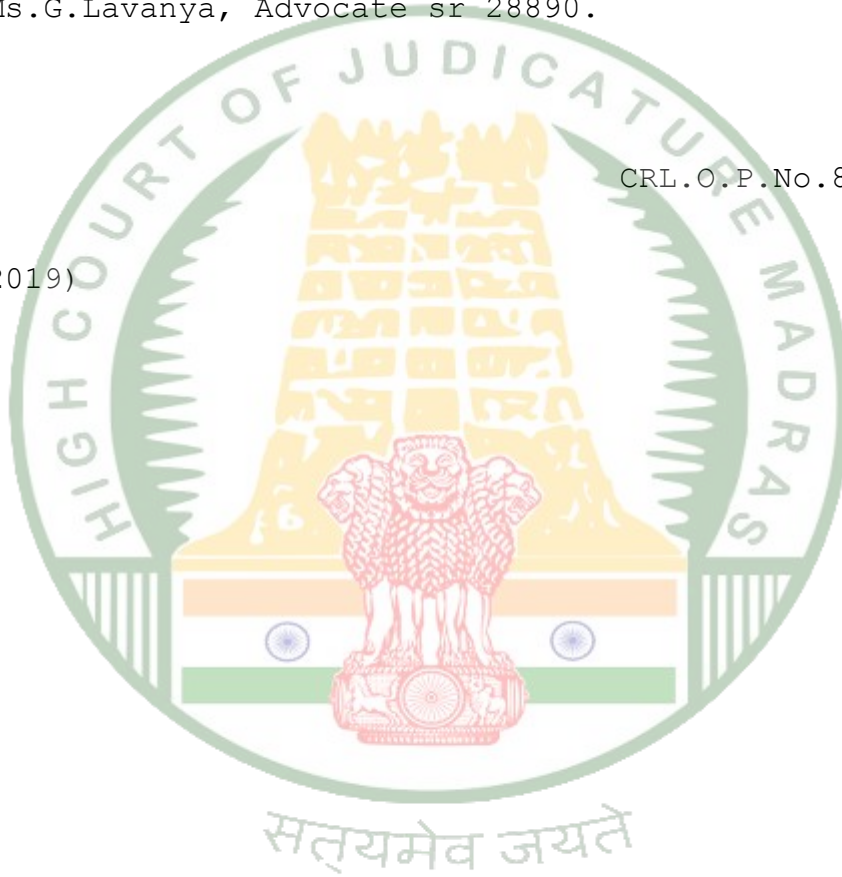
2.The Sub-Inspector of Police,
15th Team, Central Crime Branch,
Egmore, Chennai - 600 008.

3.The Public Prosecutor,
High Court, Madras.

+1 CC to Ms.G.Lavanya, Advocate sr 28890.

CRL.O.P.No.8127 of 2019

PMS (CO)
SP(13/05/2019)



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