

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.8152 of 2019

&

CRL.M.P.Nos.4397 & 4398 of 2019

Mehaboosha

... Petitioner

Vs.

1. State rep. by
Inspector of Police,
Cuddalore NT Police Station,
Cuddalore Dist.

2. G.Baburaj

... Respondents

PRAYER:

Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records of the Judicial Magistrate II, Cuddalore in C.C.No.157 of 2018 and quash the proceedings insofar as it relates to the petitioner herein.

For Petitioner : Mr.A.Arasu Ganesan

For Respondent 1 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This petition has been filed to quash the proceedings in C.C.No.157 of 2018 on the file of the learned Judicial Magistrate II, Cuddalore.

2. The learned Counsel appearing for the petitioner would submit that the petitioner is an innocent person and she has not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.523 of 2017 for the offences under Sections 406 & 420 of IPC, as against the petitioner and filed charge sheet in C.C.No.157 of 2018 before the learned Judicial Magistrate II, Cuddalore. Hence he prayed to quash the same.

3. The learned Additional Public Prosecutor 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 Additional Public Prosecutor 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. The crux of the allegation is that the petitioner who is arrayed as third accused, along with two other accused persons received a sum of Rs.17,00,000/- from the defacto complainant to get license for opening of new petrol bunk. Thereby they cheated the defacto complainant. It is also seen that there are specific averments and allegations as against the petitioner.

7. 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 CrI.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.

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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."

8. In the case on hand also, there are specific allegations as against the petitioner and any of the grounds cannot be raised by the petitioner now. All the grounds raised by the petitioner can be raised only before the trial court during trial. Therefore, this Court has no ground to quash the charge sheet.

9. Accordingly, the Criminal Original Petition is dismissed.
Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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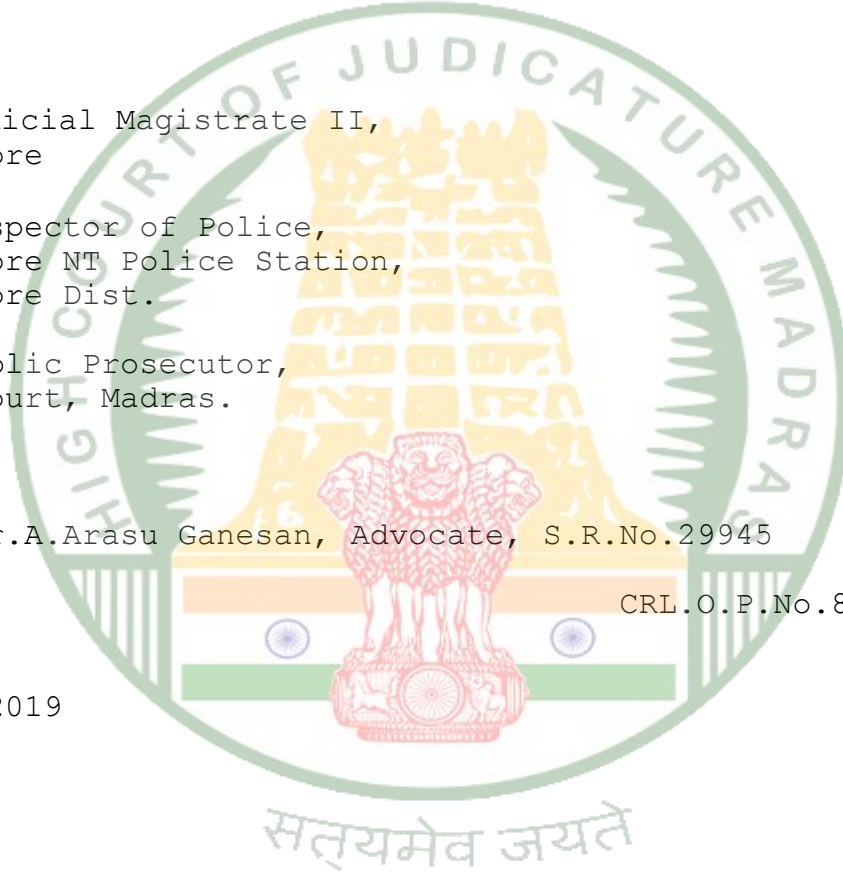
To

1. The Judicial Magistrate II,
Cuddalore
2. The Inspector of Police,
Cuddalore NT Police Station,
Cuddalore Dist.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.A.Arasu Ganesan, Advocate, S.R.No.29945

CRL.O.P.No.8152 of 2019

MG(CO)
CS/23/05/2019



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