

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.8221 of 2019
and
Crl.M.P.No.4419 of 2019

1.R.Venkatachalam
2.S.Anbazhagan

... Petitioners

Vs.

The State of Tamil nadu,
Inspector of Police,
Thirumanur Police Station,
Ariyalur District.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to the alteration report dated 22.05.2018 filed by the respondent police on the file of the Judicial magistrate-II, Ariyalur in Crime No.137/2018 for the alleged offence under Sections 408, 467, 477A of IPC and to quash the same.

For Petitioners: Mr.G.Ilamurugu

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

O R D E R

This petition has been filed to quash the alteration report dated 22.05.2018 filed by the respondent police in Crime No.137 of 2018, thereby altered the offences in the above said case into Sections 408, 467, 477A of IPC.

2. Learned counsel for the petitioners submitted that the petitioners are working in the TASMAL and they lodged complaint that on 17.05.2018 at about 6.30 a.m., the locks of the shop were broken and liquor bottles worth about Rs.2,73,120/- were stolen. The same was registered by the respondent police in Crime No.137 of 2018 for the offences under Sections 457 & 380 of IPC. Thereafter the respondent police filed an alteration report altering the offences under sections 408, 467 and 477A of IPC as against the petitioners.

2.1. He further submitted that it is clearly stated in the audit report dated 03.05.2018 submitted by the TASMAC audit department that a sum of Rs.480/- alone is deficit as on 03.05.2018. He also submitted that new liquor bottles were purchased only on 14.05.2018 and thereafter, the occurrence took place. Therefore, the petitioners are no way connected with the alleged occurrence and the respondent police without conducting proper enquiry filed this alteration report. Hence, he prayed to set aside the above alteration report.

3. The learned Additional Public Prosecutor appearing for the respondent submitted that after due enquiry have been made by the respondent, it is found that there are specific allegations which constitute the offences under Sections 408, 467 and 477A of IPC as against these petitioners. Therefore, he prays to dismiss this quash petition.

4. Heard the learned counsel appearing for the petitioners as well as the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

5. It is seen that initially the petitioners lodged complaint before the respondent and the same was registered in crime No.137 of 2018 for the offences under Sections 457 and 380 of IPC. The crux of the complaint is that the first petitioner is a supervisor and the second petitioner is a salesman who were working in the TASMAC and lodged a complaint alleging that on 17.05.2018 at about 6.30 a.m., the locks of the shop were broken and liquor bottles worth about Rs.2,73,120/- were stolen. Based on the complaint, the respondent police registered FIR in Crime No.137 of 2018 for the offences under Sections 457 & 380 of IPC. After investigation, the respondent found that the petitioners having colluded with each other with an intention to cheat the department, illegally sold out the liquor bottles to third parties. Thereafter the respondent police filed an alteration report dated 22.05.2018 before the learned Judicial Magistrate-II, Ariyalur in Crime No.137 of 2018 for the alleged offences under sections 408, 467 and 477A of IPC as against the petitioners.

6. It is seen from the First Information Report that there is a specific allegation as against the petitioner, 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 machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

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 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."

8. In view of the above discussion, this Court is not inclined to quash the alteration report dated 22.05.2018 in Crime No.137 of 2018. However, the petitioners are at liberty to produce the audit report dated 03.05.2018 before the respondent during enquiry and the respondent is directed to consider the material produced by the petitioners and proceed further in accordance with law.

9. In the result, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Judicial magistrate-II,
Ariyalur.

2.The Inspector of Police,
Thirumanur Police Station,
Ariyalur District.

3.The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.8221 of 2019

vba[co]
srg 12/06/2019



WEB COPY