

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.9941 of 2019 and
CrI.M.P.Nos.5175 & 5176 of 2019

1.S.Rajasekar Reddy
2.R.Rohit Reddy
... Petitioners/Accused

Vs.

1.The State of Tamil Nadu
rep.by the Inspector of Police
K-2, Ayanavaram Police Station
(Crimes) Ayanavaram
Chennai-23
(Crime No.1506/2011)

2.R.Kanthasamy
... Respondents/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.8195 of 2017 on the file of the learned V Metropolitan Magistrate, Egmore, Chennai-8 and quash the same.

For Petitioners : Mr.V.Bhiman

For RR1 : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed by the petitioners under Section 482 Cr.P.C. to call for the records in C.C.No.8195 of 2017 on the file of the learned V Metropolitan Magistrate, Egmore, Chennai-8 and quash the same.

2.The learned counsel for the petitioners would submit that the defacto complainant gave a sum of Rs.10,40,000/- as a Commission for the purpose of arranging the Bank loan for the business of Rs.1 Crore. Since the amount involved is very huge, bank guarantee was required and also documents of title are

required. The defacto complainant who had earlier intended to offer his property of collateral security subsequently informed the 1st petitioner that the said property was already subjected to Mortgage with the State Bank of India. Therefore, the 1st petitioner issued two cheques for a sum of Rs.3 lakhs and Rs.6 lakhs and the same were dishonoured for insufficient funds. Hence, the defacto complainant lodged a false complaint to the 1st respondent herein which was registered for alleged offences u/s.406, 420, 392 and 506/2 IPC in Crime No.1506 of 2011.

3.The defacto complainant lodged a complaint before the 1st respondent police for the offence under Section 406, 420, 392 and 506/2 IPC, stating that the 1st petitioner received a sum of Rs.10,40,000/- towards commission for the purpose of arranging the bank loan of Rs.1 Crore from the Dena Bank Kandivily Branch, Mumbai but the said loan was not arranged. The 1st petitioner also issued two cheques towards the repayment of the commission amount, but those two cheques were returned as dishonoured for insufficient funds.

4.Heard the learned counsel on either side.

5.It is seen from the records that the 1st petitioner received a sum of Rs.10,40,000/- from the defacto complainant towards commission for arranging a bank loan for a sum of Rs.1 Crore for his business purpose. The said loan was not arranged by the 1st petitioner herein and the petitioner has also failed to repay the commission amount received from the defacto complainant and the two cheques issued by the petitioner for the repayment of the commission amount were also returned as insufficient funds.

6.It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in Crl.A.No.255 of 2019 dated 12.02.2019 in the case of Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors., as follows:-

"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."

7. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in CrI.A.No.579 of 2019 dated 02.04.2019 in the case of Devendra Prasad Singh Vs. State of Bihar & Anr., as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

8. Therefore, all the points raised before this Court shall be considered only at the time of trial. Hence, this Court is not inclined to quash the proceedings in C.C.No.8195 of 2017 pending on the file of the learned V Metropolitan Magistrate, Egmore, Chennai-8. Considering the fact that the C.C.No.8195 is pending from the year 2017, the learned Magistrate is hereby directed to complete the trial in C.C.No.8195 of 2017 within a period of three months.

9. However, considering the age of the 1st petitioner, the personal appearance of the 1st petitioner is dispensed with and he shall be represented by a counsel after filing appropriate application. The petitioner 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.

10. Accordingly, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are also closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To.

1.The Inspector of Police
K-2, Ayanavaram Police Station
(Crimes) Ayanavaram
Chennai-23
(Crime No.1506/2011)

2.Public Prosecutor
High Court of Madras

+1 CC to Mr.V.Bhiman, Advocate sr 36088.

Crl.O.P.No.9941 of 2019
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Crl.M.P.Nos.5175 &
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SP(09/05/2019)



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