

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.8132 of 2019

J.M.H.Asen Moulana

... Petitioner

Vs.

1.State Rep by
Inspector of Police,
W-20, All Women Police Station,
Saidapet,
Chennai - 15.

2.Mrs.Parvathi @ Parveen Fathima Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records in Crime No.4 of 2018, pending on the file of the 1st respondent police, based upon the compromise entered between the petitioner/sole accused and the 2nd respondent/defacto complainant.

For Petitioner : Mr.A.Manoj kumar
For Respondent 1 : Mr.C.Raghavan,
Government Advocate(Crl. Side)

O R D E R

This petition has been filed to quash the FIR registered in Cr.No.4 of 2018 on the file of the respondent for the offences under Sections 417, 376, 498, 506(1) of IPC r/w Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002.

2. The learned Counsel appearing for the petitioner would submit that the petition is an innocent person and he has not committed any offence as alleged by the prosecution. Without any base, the third respondent police registered a case in Crime No.4 of 2018 for the offences under Sections 417, 376, 498, 506 (1) of IPC r/w Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002, as against the petitioner. Hence he prayed to quash the same.

3. The learned Government Advocate (Crl. Side) would submit that the investigation is almost completed and the respondent police have only to file final report.

4. Heard Mr.A.Manoj kumar, learned counsel appearing for the petitioner and Mr.C.Raghavan, learned Government Advocate (Crl. Side) appearing for the first respondent.

5. 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.

6. It is also seen that the defacto complainant has no objection to quash the FIR, though the petitioner has committed serious and heinous offence. It would not be appropriate for this Court to quash the FIR under Section 482 of Cr.P.C., which was registered for the offence under Section 376 of IPC.

7. In this regard, it is 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.

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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."

As per the guidelines issued by the Hon'ble Supreme Court, this Court is not inclined to quash the FIR filed under Section 376 of IPC, though the parties were entered into compromise between them.

8. In view of the above, the Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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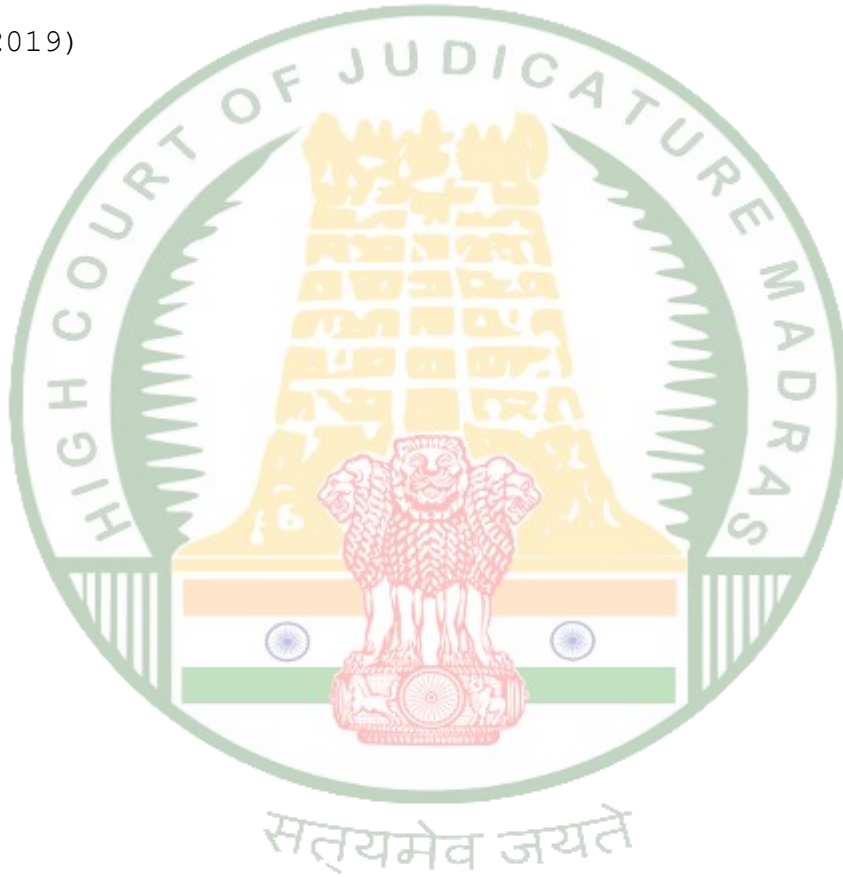
To

1.The Inspector of Police,
W-20, All Women Police Station,
Saidapet, Chennai - 15.

2.The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.8132 of 2019

CS (23/05/2019)



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