

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2019

CORAM:

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

Crl.O.P.No.16846 of 2018
and Crl.M.P.No.8701 of 2018

1.M.John Peter
2.K.J.Richard Martin
3.M.James Victor
...Petitioners
Vs.

1.The State represented by
The Inspector of Police,
Central Crime Branch, Team-I, Chennai-07

2.M.Baskar
...Respondents

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to call for the records relating to F.I.R.No.166 of 2018, dated 27.04.2018 on the file of the 1st respondent police and quash the same

For Petitioners : Mr.C.P.Sivamohan

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

For R2 : Mr.P.Kumaresan

सत्यमेव जयते
O R D E R

This petition has been filed to quash the F.I.R.No.166 of 2018, dated 27.04.2018 on the file of the 1st respondent police.

2. The petitioners were arrayed as A1 to A3 in F.I.R.No.166 of 2018 for the offences punishable under Sections 420, 465, 467, 468, 471 and 109 IPC of the basis of complaint given by the 2nd respondent herein.

3. On perusal of records, it is seen that there was a dispute between the 1st petitioner and the 2nd respondent/Defacto complainant. The Defacto complainant borrowed Rs.1,00,00,000/- from the 1st petitioner for his business development and as a security had issued blank cheques. Subsequently, the defacto

complainant/second respondent returned the said amount on 26.04.2013 together with interest. However, the cheques given as security were not returned to him. Thereafter, when the 2nd respondent asked for the return of cheques, the 1st petitioner with an intention to gain illegally through the 2nd and 3rd petitioners, sent notice to the 2nd respondent/defacto complainant. Hence, the second respondent/ defacto complainant made a complaint as against the petitioners and the same was registered in F.I.R.No.166 of 2018 on the file of the respondent police for the offences under Sections 420, 465, 467, 468, 471 and 109 IPC. Under such circumstances, the petitioners herein have filed the present petition to quash the charge sheet filed in F.I.R.No.166 of 2018.

4. The learned counsel for the petitioners submitted that the respondent police without proper investigation has filed the charge sheet as against the petitioners in F.I.R.No.166 of 2018. He further submitted that there are sufficient materials to show that the petitioners did not commit any offence as alleged by the prosecution. Hence, he prays to quash the entire proceedings in F.I.R.No.166 of 2018.

5. It is relevant to extract the following observations made by the 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, with regard to quashing of the criminal proceedings.

"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."

6. On perusal of the complaint, it is seen that there are specific allegations as against the petitioners to attract the offences under Sections Sections 420, 465, 467, 468, 471 and 109 IPC. Hence, this Court does not find any merits to quash the charge sheet in F.I.R.No.166 of 2018. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is also closed.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

vsn

To

1.The Inspector of Police,
Central Crime Branch, Team-I, Chennai-07

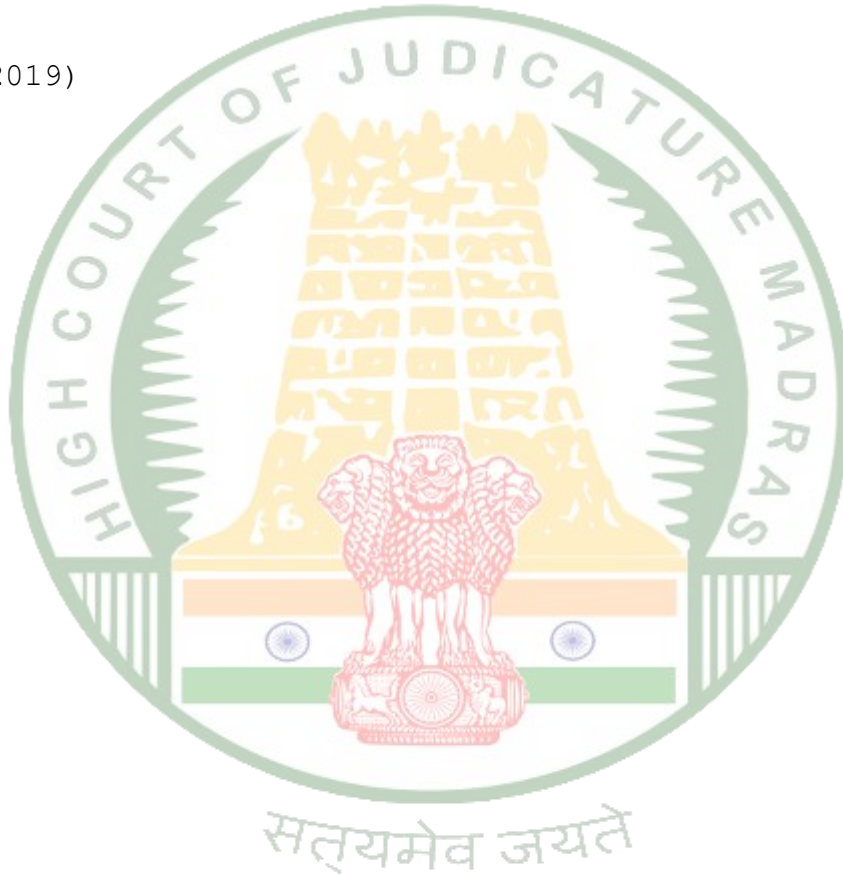
2. The Public Prosecutor,
High Court, Madras.

+2 Ccs to Mr.C.P.Sivamohan, Advocate sr 39766.

+1 CC to Mr.K.Senthil Kumar, Advocate sr 39791

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PM(CO)
SP(08/05/2019)



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