

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.9312 of 2019 and
CrI.M.P.No.4928 of 2019

K.Thirumalaidasan

... Petitioner

Vs.

1.State rep. by
The Inspector of Police
Maduravoyal Police Station
Maduravoyal, Chennai

2.Mahendra Chugh

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the First Information Report dated 01.03.2019 registered in Crime No.129 of 2019 on the file of the 1st respondent police viz. Inspector of Police, Maduravoyal Police Station and quash the same.

For Petitioner : Mr.R.Thamaraiselvan

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

ORDER

This petition has been filed to quash the FIR in Crime No.129 of 2019 on the file of the first respondent.

2.The learned counsel for the petitioner would submit that the complaint lodged by the 2nd respondent and consequential First Information Report in Crime number 129 of 2019 registered by the 1st respondent for the alleged offence under section 385 & 506(i) IPC is an abuse of process of law, engineered at with an intention to harass the petitioner inasmuch as there is no material available to connect the petitioner with the said offences. The petitioner is the bonafide purchaser of the flat from the builder, when the petitioner pointed out the deficiencies the builder bound to rectify the same as per the agreement. Since the builder is failed to perform their duty,

the petitioner was forced to file a complaint before the Consumer Court against them. The present complaint has been lodged for the sole purpose of compelling the petitioner to withdraw the consumer complaint. Hence this petition.

3.Mr.M.Mohamed Riyaz, Additional Public Prosecutor would submit that the crime has been registered in Crime No.129 of 2019 for the offences under Sections 385, 506(i) IPC. The petitioner with a malicious intention to extract money from the complainant has stooped down and made frivolous allegation as against the complainant before the various forums and Government Authorities and instigated the other flat owners of the Association to file frivolous cases in order to unjustly enrich himself. Therefore, he prayed for dismissal of this quash petition.

4.Heard, Mr.R.Thamaraiselvan, the learned counsel for the petitioner and Mr.M.Mohamed Riyaz, Additional Public Prosecutor appearing for the first respondent Police.

5.On perusal of records, it shows that the petitioner is the accused in Crime No.129 of 2019. The second respondent lodged a complaint on the allegation that the petitioner with a malicious intention to extract money from the complainant has stooped down and made frivolous allegation as against the complainant before the various forums and Government Authorities and instigated the other flat owners of the Association to file frivolous cases in order to unjustly enrich himself. Accordingly, the petitioner has committed serious offence. Therefore, this Court is not inclined to entertain this petition.

6.Further it is seen from the First Information Report that there is a specific allegation as against the petitioners, 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.Further, 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, the Hon'ble Supreme Court of India has held 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.

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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 view of the above discussions and as held by the Hon'ble Supreme Court of India, this Criminal Original Petition is dismissed.

9. However, considering the above facts, the 1st respondent is directed to complete the investigation in Crime No.129 of 2019 and file a final report within a period of three months from the date of receipt of copy of this Order, before the jurisdictional Magistrate, if not already filed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police
Maduravoyal Police Station
Maduravoyal, Chennai

2. Public Prosecutor
High Court of Madras.

+1cc to Mr.K.Thamarai Selvan, Advocate Sr.33314

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srg 6/5/2019

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