

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No. 8754 of 2019
Crl.M.P.Nos.4638 & 4851 of 2019

1. Prabu
2. A.Subramani
3. A.Vetrivel
4. Deiveegan Petitioners

Vs.

1. State represented by
The Inspector of Police,
Ulundurpet Police Station,
Ulundurpet.
(Crime No.77 of 2015)
2. Kala Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.7 of 2018 on the file of the learned Judicial Magistrate No.1, Ulundurpet, Villupuram District and quash the same.

For Petitioners : Mr.G.Mohanakrishnan for
M/s.K.C.Panneer Selvam

For R1 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

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O R D E R

This Criminal Original Petition has been filed to call for the records in C.C.No.7 of 2018 on the file of the learned Judicial Magistrate No.1, Ulundurpet, Villupuram District and quash the same.

2. The learned Counsel appearing for the petitioner would submit that the petitioners are innocent persons and they have not committed any offence as alleged by the prosecution. Without

any base, the first respondent police registered a case in Crime No.77 of 2015 for the offence under Sections 147, 294(b), 323, 354 of IPC as against the petitioners and filed charge sheet in C.C.No.7 of 2018 before the Judicial Magistrate No.1, Ulundurpet. Hence he prayed to quash the same.

3. The learned Additional Public Prosecutor would submit that there are specific allegations as against the petitioners to attract the offence under Sections 147, 294(b), 323, 354 of IPC. He further submitted that all the points raised by the petitioners have to be considered only during the trial. Therefore, he prayed to dismiss this petition.

4. Heard Mr.G.Mohanakrishnan, learned counsel appearing for the petitioners and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent.

5. It is seen from the charge there are specific averments to attract the offences as against the petitioners. Further it is also seen that there are materials to connect the petitioner to the offences. More over all the points raised by the petitioners have to be considered only during the trial. The petitioners at liberty to raise all the points before the Court below during the trial.

6. Further, 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, 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."

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.

6. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.7 of 2018. However, considering the facts and circumstances of the case, the personal appearance of the 1st petitioner alone is dispensed with and 1st petitioner shall be represented by a counsel after filing appropriate application. The 1st 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. Considering the fact that the calendar case is of the year 2018, the trial Court is directed to complete the trial proceedings within a period of six months from the date of receipt of copy of this Order.

7. With the above directions, this Criminal Original Petition stands disposed of. Consequently, connected miscellaneous petitions are closed.

sd/-

Assistant Registrar (AD-IV)

//True Copy//

Sub Assistant Registrar

ssr

To

1. The Judicial Magistrate No.1,
Ulundurpet,
Villupuram District.
2. The Inspector of Police,
Ulundurpet Police Station,
Ulundurpet.
3. The Public Prosecutor,
High Court, Madras.

Crl.O.P.No. 8754 of 2019
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RK(CO)
SSM(28/05/2019)



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