

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 03.04.2019

CORAM
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. No.8860 of 2019
and
Crl.M.P.No.4733 of 2019

1.Shanthi
2.Gowtham

...Petitioners

Vs.

1.State rep. by Inspector of Police,
R.S.Puram P.S.Coimbatore.

2.Abdullah Kaan

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in Crime No.1164 of 2018 pending on the file of the 1st respondent police and quash the same.

For Petitioners: Mr.N.Vanaraj

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

O R D E R

This petition has been filed to quash the proceedings in Crime No.1164 of 2018 pending on the file of the 1st respondent police.

2.The petitioners were arrayed as accused 2 and 3 in Crime No.1164 of 2018 for the offences under Sections 406, 420 and 120B IPC pending on the file of the first respondent police.

3.On perusal of records, it is seen that the petitioners are running a financial company in the name and style of S.S.Associates for availing business loan from Oriental Bank of Commerce, R.S.Puram Branch, Coimbatore. The defacto complainant has approached the petitioners for availing loan to improve his business for which he had mortgaged a property belonging to one Murugesan, Velliangiri. It is seen that the bank had credited loan to the tune of Rs.17 Lakhs to the account of Optik Zone, maintained by the daughter of the defacto complainant and that amount was taken by the petitioners itself using the cheque leaves signed by the defacto complainant's daughter, which was taken from her stating that it is needed to transfer the amount. Likewise, an another sum of Rs.15 Lakhs was also cheated by the

petitioners. Hence, the 2nd respondent lodged a complaint before the respondent police and a case was registered in Crime No.1164 of 2018 against the petitioners for the offence under Sections 406, 420 and 120B IPC. Hence, the petitioners have filed the present petition with the aforesaid prayer.

4.The learned counsel for the petitioner submitted that the respondent police without proper investigation filed F.I.R. as against these petitioners in Crime No.1164 of 2018. He further submitted that there are sufficient materials to show that the 1st petitioner is the housewife and the 2nd petitioner is a student and they did not commit any offence as alleged by the prosecution. Hence, he prays to quash the proceedings in Crime No.1164 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 Pokarnekhar 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.

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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."

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 406, 420 and 120B IPC. Hence, this Court does not find any merits to quash the investigation in Crime No.1164 of 2018. Accordingly, this Criminal Original Petition is dismissed. However, considering the nature of allegation, the 1st respondent is directed to conduct an enquiry with the parties concern and the counter part and file a final report within a period of three months from the date of receipt of copy of this order. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsn/rm

To

1. The Inspector of Police,
R.S.Puram P.S. Coimbatore.

2. The Public Prosecutor, High Court, Madras.

+1cc to Mr.N.Vanaraj, Advocate, S.R.No.32039

CrI.O.P. No.8860 of 2019
and
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AK (CO)
RRS (10/05/2019)