

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Cr1.O.P.No.9197 of 2019

G.Senguttuvan

... Petitioner

Vs.

1.State by
The Inspector of Police
Thuthoor Police Station
Ariyalur District
Crime No.16 of 2018

2.P.Thirumalai Rajan

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in Crime No.16 of 2018 pending on the File of Inspector of Police, Thoothur Police Station, Ariyalur District and quash the FIR pending against the petitioner.

For Petitioner : Mr.P.Muthamizh Selvakumar
For RR1 : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

ORDER

This petition has been filed to quash the FIR in Crime No.16 of 2018 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 16 of 2018 registered by the 1st respondent for the alleged offence under sections 294(b), 420, 506(1) 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 defacto complainant / 2nd respondent worked at Malesiya and a person from Libya approached the complainant stating that 60 persons required for job placed in Libya. Hence, the complainant collected money from 60 persons for employment but did not

send them to Libya. To return the money collected from the victims, the defacto complainant sold the cultivation land to the petitioner and the amount was settled to the victims by the petitioner. Now, after a lapse of 12 years, the defacto complainant continuously demanding the petitioner to return the said property as the present value of the property is very huge. The petitioner has filed a suit in O.S.No.254 of 2017 before the District Munsif Court, Ariyalur and obtained interim injunction. In the mean time the 2nd respondent / defacto complainant lodged a police complaint against the petitioner. The 1st respondent issued a summon to the petitioner on 25.12.2017, in the meantime court granted interim injunction against the respondents so the petitioner did not appear before the 1st respondent. Thereafter the 2nd respondent filed a direction to register the FIR in his complaint dated 06.12.2017 and the same was taken on file in CrI.O.P.No.688 of 2018 and the same was allowed and the Court issued the general direction to the Superintendent of Police to register the complaint and make enquiry. Hence this petition.

3.Mr.M.Mohamed Riyaz, Additional Public Prosecutor would submit that the crime has been registered in Crime No.16 of 2018 for the offences under Sections 294(b), 420, 506(1) IPC.

4.Heard, Mr.P.Muthamish Selvakumar, 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.16 of 2018. The second respondent lodged a complaint on the allegation that the petitioner with a malicious intention to grab the property from the complainant has stooped down and made frivolous allegation as against the complainant. 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 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.

7. 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."

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

9. However, considering the fact that FIR has been registered in the year 2018, the 1st respondent is directed to complete the investigation in Crime No.16 of 2018 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.

Sd/-

Assistant Registrar (CS iii)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police
Thuthoor Police Station
Ariyalur District Crime No.16 of 2018

2. Public Prosecutor

High Court of Madras

+lcc to Mr. P.Muthamizh Selvakumar , Advocate SR.No. 33821

CrI.O.P.No.9197 of 2019

cp(CO) A.SK(06/05/2019)