

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.9320 of 2019 and
CrI.M.P.No.4920 of 2019

1.Sakkarai
2.Kaliyammal

... Petitioners

Vs.

1.State rep. by
The Inspector of Police
All Women Police Station
Ulunthurpet
Villupuram District
(Crime No.22 of 2018)

2.Jagadeeswari

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to FIR in Crime No.22 of 2018 on the file of the All Women Police Station, Ulunthurpet, Villupuram District and quash the same.

For Petitioners: Mr.R.Sasikumar

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

ORDER

This Criminal Original Petition has been filed by the petitioners under Section 482 Cr.P.C. to call for the records relating to FIR in Crime No.22 of 2018 on the file of the All Women Police Station, Ulunthurpet, Villupuram District and quash the same.

2.The learned counsel for the petitioners would submit that the complaint lodged by the 2nd respondent and consequential First Information Report in Crime number 22 of 2018 registered by the 1st respondent for the alleged offence under section 498 (A), 323 & 294(b) IPC is an abuse of process of law, engineered at with an intention to harass the petitioners inasmuch as there is no material available to connect the petitioner with the said

offences. The petitioners are the parents of the 1st accused and they are living separately from the next day of their marriage. The 1st respondent registered the FIR without considering the report of the Family Welfare Committee which does not reflect any allegation against the petitioners. The 1st accused / husband filed a Divorce Petition in HMOP No.638 of 2018 before the Sub-Court, Tambaram on 18.05.2018 after receiving the summon only, on 23.05.2018, the defacto complainant lodged this false complaint alleging that her husband and in-laws abused and assaulted her. The respondent police registered the case without conducting any enquiry. Hence this petition.

3.Mr.M.Mohamed Riyaz, Additional Public Prosecutor would submit that the crime has been registered in Crime No.22 of 2018 for the offences under Sections 498(A), 323 & 294(b) IPC. The petitioners along with their son / main accused abused and assaulted the defacto complainant by demanding her jewels to repay the individual loan amount borrowed by the husband. Therefore, he prayed for dismissal of this quash petition.

4.Heard, Mr.R.Sasikumar, the learned counsel for the petitioner and Mr.M.Mohamed Riyaz, Additional Public Prosecutor appearing for the 1st respondent Police.

5.On perusal of records, it shows that the petitioners are the accused in Crime No.22 of 2018. The 2nd respondent lodged a complaint on the allegation that the petitioners abused, assaulted her and tortured her. Accordingly, the petitioners have 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 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 above facts, the petitioners are directed to submit all the relevant documents before the 1st respondent. The 1st respondent on receipt of the same, consider the same and complete the investigation 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. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1) The Inspector of Police
All Women Police Station
Ulunthurpet, Villupuram District

2) Public Prosecutor
High Court of Madras

CrI.O.P.No.9320 of 2019
and
CrI.M.P.No.4920 of 2019

LN (CO)
SSM(06/05/2019)

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