

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Cr1.O.P.No.9790 of 2019 and
Cr1.M.P.No.5128 of 2019

D.G.Kumar

... Petitioner

Vs.

1.The State rep. by
The Inspector of Police (Crime)
F5, Choolaimedu Police Station
Chennai-600 094

2.B.Rajan

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the entire records in FIR in Crime No.1471 of 2017 on the file of the respondent police and quash the same.

For Petitioner : Mr.T.S.Charles
For RR1 : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

ORDER

This petition has been filed to quash the FIR in Crime No.1471 of 2017 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 1471 of 2017 registered by the 1st respondent for the alleged offence under section 406 & 420 IPC is a clear 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 only acted as Mediator in the above transaction and not the party in the above proceedings. The complaint is that the defacto complainant handover over the said amount of Rs.22,50,000/- to the owner of the property viz. Lakshmi W/o.Durairaj. The defacto complainant has not paid any amount to the petitioner and inspite of that the petitioner has been arrayed as an accused and not the Lakshmi who received the

money and executed a forged Power of Attorney. Hence this petition.

3.Mr.M.Mohamed Riyaz, Additional Public Prosecutor would submit that the crime has been registered in Crime No.1471 of 2017 for the offences under Sections 406 & 420 IPC. The petitioner is the friend of defacto complainant and acted as a Mediator and instigated the complainant to pay a sale consideration of Rs.22,50,000/- to one Lakshmi for obtaining Power of Attorney. Therefore, he prayed for dismissal of this quash petition.

4.Heard, Mr.T.S.Charles, 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.1471 of 2017. The second respondent lodged a complaint on the allegation that the petitioner with a malicious intention to extract money from the complainant has acted as a mediator and collected a sum of Rs.22,50,000/- towards sale consideration for the forged property document 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 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 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 hereby directed to complete the investigation in Crime No.1471 of 2017 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

//True Copy//

Sub Assistant Registrar

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To

1.The Inspector of Police (Crime)
F5, Choolaimedu Police Station
Chennai-600 094

2.Public Prosecutor
High Court of Madras

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