

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2019

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.OP.No.9936 of 2019
and CRL.MP.No.5172 of 2019

Elizabeth @ Rani Elizabeth

... Petitioner

Vs.

1.State

Rep. by the Inspector of Police,
CCB-EDF-I, Team -9,
Vepery, Chennai.

2. Radhakrishnan

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the case in Cr.No.495 of 2018 as against the petitioner herein, pending on the file of the 1st respondent and quash the same.

For Petitioner : Mr. S. Pushpakaran

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

O R D E R

The Criminal Original Petition has been filed to call for the records pertaining to the case in Cr.No.495 of 2018 as against the petitioner herein, pending on the file of the 1st respondent and quash the same.

2.The learned Counsel appearing for the petitioner would submit that the petitioners are innocent person and she has not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No. 495 of 2018 for the offence under Sections 420, 506(i) r/w 34 of IPC based on the complaint preferred by the 2nd respondent as against the petitioner herein and the same is pending on the file of the 1st respondent police. 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 420, 506(i) r/w 34 of IPC . He would further submit that all the points raised by the petitioner are to be considered only during the trial. Therefore, he prayed for dismissal of this petition.

4.Heard, Mr. S. Pushpakaran, learned counsel appearing for the petitioner, Mr. M. Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent and perused the materials available on record.

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

6. In this context, it is pertinent to refer 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 relevant paragraphs are extracted hereunder:

"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.

.....

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."

7. In view of the observations made in the judgment cited supra, this Court is not inclined to quash the proceedings in Crime. No.495 of 2018 pending on the file of the 1st respondent. However, the 1st respondent police is directed to complete the investigation and file a final report before the concerned jurisdictional magistrate within a period of three months from the date of receipt of a copy of this order.

8. In view of the above, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

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Sub Assistant Registrar

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To

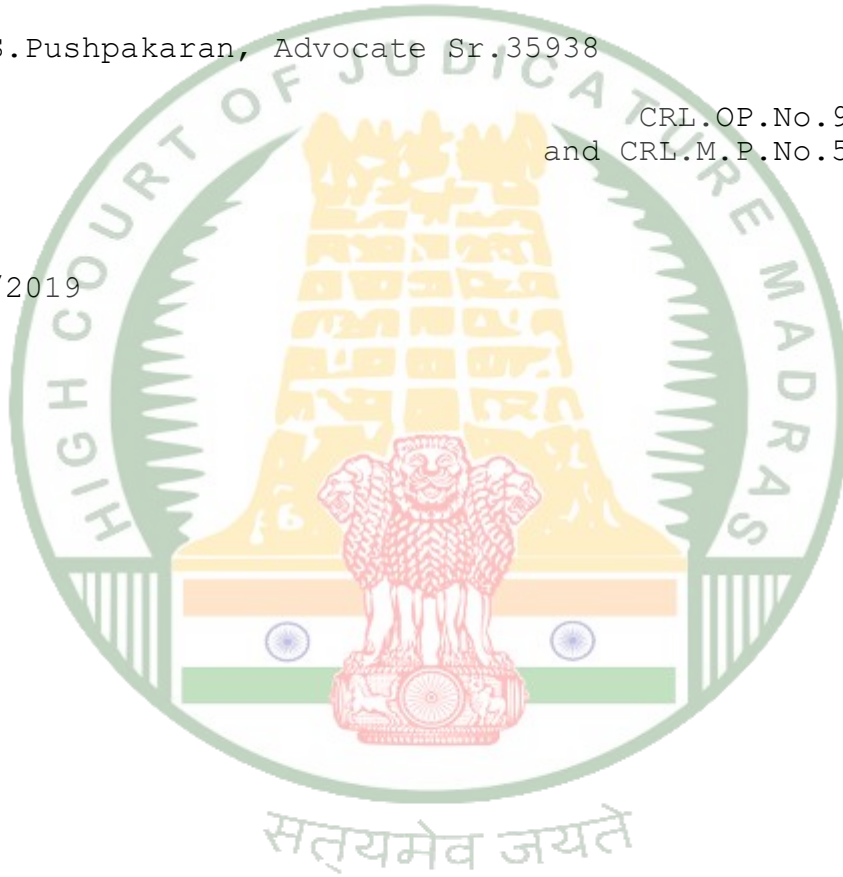
1. The Inspector of Police,
CCB-EDF-I, Team -9,
Vepery, Chennai.

2.The Public Prosecutor,
High Court, Chennai - 104.

+1cc M/S.S.Pushpakaran, Advocate Sr.35938

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