

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.10137 of 2019

and

Crl.M.P.Nos.5242 & 5244 of 2019

- 1.Sudha
- 2.Gowtham
- 3.Anandan
- 4.Rajkumar

.... Petitioners/Accused 4 to 7

Vs.

State by

1.The Asst. Commissioner of Police
Walajpet, Vellore District

2.The Inspector of Police
Kaveripakkam Police Station
Vellore District
(Crime No.316/2016)

3.Auchudhan

.... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records of S.C.No.14/2018 on the file of Principal Sessions Court at Vellore and Quash the same as against the petitioners herein.

For Petitioners : Mr.Ramesh.R

For Respondents : Mr.M.Mohamed Riyaz,
Addl. Public Prosecutor for R1 & R2

ORDER

This Criminal Original Petition has been filed by the petitioners under Section 482 Cr.P.C. to call for the records of S.C.No.14/2018 on the file of Principal Sessions Court at Vellore and Quash the same as against the petitioners herein.

2.The learned counsel for the petitioners would submit that on 20.07.2016, the defacto complainant made a galatta in front of one Sudhakar Provisional Store. The petitioners are no way connected with the incident. The petitioners were only safeguarding the defacto complainant and Sudhakar. To avoid taking criminal action, the defacto complainant lodged a false complaint as against the petitioners stating that the petitioners brutally attacked him. The respondent police without conducting proper enquiry registered a case against the petitioners and filed a charge sheet before the Judicial Magistrate, Walaja in Crime No.316/2016 stating that all the petitioners involved in the offence under Sections 147, 148, 294 (b), 323, 324, 506(2), 336, 307, 149 IPC r/w. 3(1)(r), 3(1)(s), 3(2)(v), 3(2)(va) SC/ST (POA) Act, 2015. The Court has also issued summons and now the case is pending before the Principal District Court, Vellore and assigned S.C.No.14/2018. Hence, this petition.

4.Heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor.

5.Further it is seen from the First Information Report that there are specific allegations as against the petitioners and the defacto complainant to attract charges as alleged by the prosecution, 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.

6.It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in Crl.A.No.255 of 2019 dated 12.02.2019 in the case of Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors., 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.

.....
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.It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in Crl.A.No.579 of 2019 dated 02.04.2019 in the case of Devendra Prasad Singh Vs. State of Bihar & Anr., as follows:-

" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. Proceedings.

13.In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

8.Therefore, all the points raised before this Court shall be considered only at the time of trial. Hence, this Court is not inclined to quash the proceedings in S.C.No.14 of 2018 pending on the file of the Principal Sessions Court, Vellore District. However, the Trial Court is hereby directed to complete the trial within a period of six months from the date of receipt of a copy of this order.

9.However, considering that the 1st petitioner is a lady, the personal appearance of the 1st petitioner is dispensed with and she shall be represented by a counsel after filing appropriate application. The 1st petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment.

10.Accordingly, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(AD IV)

//True Copy//

Sub Assistant Registrar

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To.

1.The Asst. Commissioner of Police
Walajpet, Vellore District

2.The Inspector of Police
Kaveripakkam Police Station
Vellore District

3.The Public Prosecutor
High Court of Madras.

+1cc to Mr.R.Ramesh, Advocate Sr.36814

Crl.O.P.No.10137 of 2019
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5244 of 2019

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srg 23/05/2019

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