

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :25.04.2019
CORAM:
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN
Crl.O.P.No.11178 of 2019
and Crl.M.P.No.5703 and 5704 of 2019

H.Akbar Ali ... Petitioner

Vs.

1.State Rep. by
The Inspector of Police,
Puzhal Police Station,
Puzhal, Chennai.

2.S.Kala

3.A.Sahul Hameed (Deceased) ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to the charge sheet filed in C.C.No.227 of 2018 on the file of Judicial Magistrate, Thiruvottiyur, Chennai and quash the same.

For Petitioner : Mr.M.Sarfudeen Ali Ahamed

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

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.227 of 2018 on the file of the learned Judicial Magistrate, Thiruvottiyur, Chennai, having been taken cognizance for the offences punishable under Section 417, 420 and 34 of IPC.

2. The learned Counsel appearing for the petitioner would submit that the petitioner is an innocent person and he did not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.227 of 2018 for the offences under Sections 417, 420 and 34 of IPC as against the petitioner and filed charge sheet in C.C.No.227 of 2018 before the learned Judicial Magistrate, Thiruvottiyur, Chennai. He further submitted that the chit conducted by the defacto complainant is unregistered one. Hence he prays to quash the same.

3. The learned Additional Public Prosecutor would submit that there are specific allegations as against the petitioner to attract the offence under Sections 417, 420 and 34 of IPC. He further submitted that all the points raised by the petitioner has to be considered only during the trial. Therefore, he prays to dismiss this petition.

4. Heard Mr.M.Sarfudeen Ali Ahmed, learned counsel appearing for the petitioner and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the 1st respondent.

5. It is seen from the charge sheet, 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. More over all the points raised by the petitioner has 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.It is relevant to extract the following observations made by the Hon'ble Supreme Court 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, with regard to quashing of the criminal proceedings.

"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 above discussion, this Court is not inclined to quash the proceedings in C.C.No.227 of 2018. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are also closed.

8. However, considering the calendar case is of the year 2018, the trial Court is directed to complete the trial proceedings within a period of six months from the date of receipt of copy of this Order.

Sd/-

Assistant Registrar(J)

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Sub Assistant Registrar

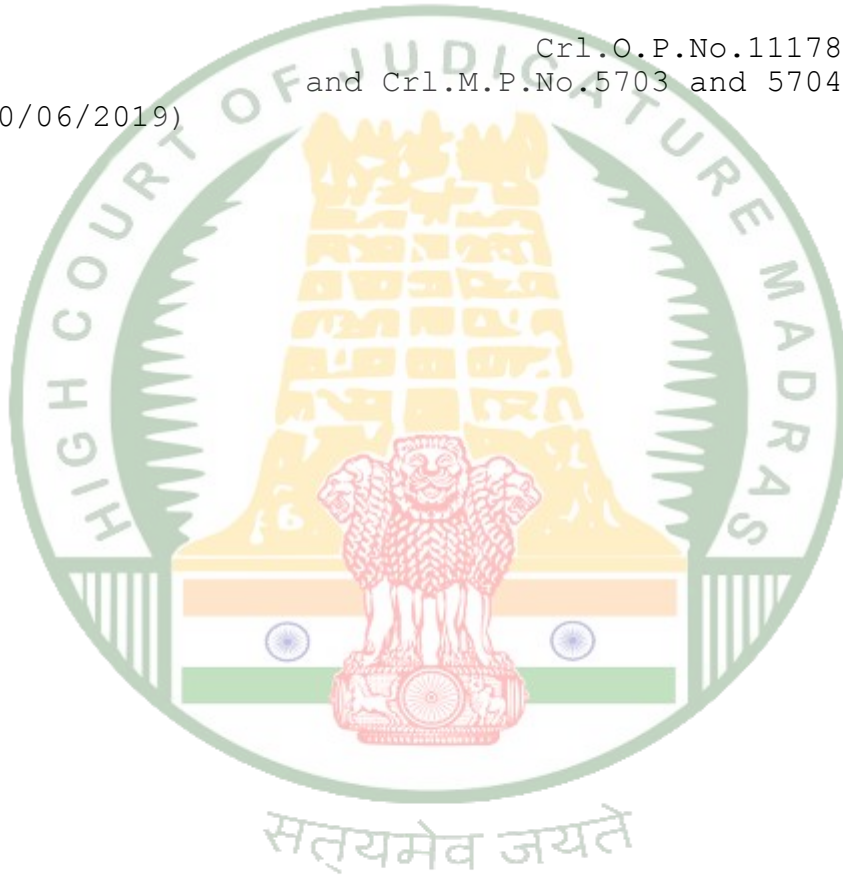
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To

1. The Judicial Magistrate,
Thiruvottiyur,
Chennai.
2. The Inspector of Police,
Puzhal Police Station,
Puzhal, Chennai.
3. The Public Prosecutor,
High Court, Chennai.

Crl.O.P.No.11178 of 2019
and Crl.M.P.No.5703 and 5704 of 2019

A.SK(10/06/2019)



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