

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2019

CORAM:

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

Crl.O.P.No.10292 of 2019
and Crl.M.P.Nos.5334 & 5335 of 2019

- 1.Elangovan
- 2.Thirunavukarasu
- 3.Nalini
- 4.Vasantha
- 5.Gopal
- 6.Chandiran
- 7.Venkatesan
- 8.Natarajan
- 9.Gopi
- 10.Narayanan
- 11.Rajendran
- 12.Jayakumar

... Petitioners

Vs.

- 1.The Inspector of Police,
Desur Police Station,
Thiruvannamalai District.

- 2.Mani

... Respondents

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to call for the records relating to C.C.No.50 of 2018 on the file of the Judicial Magistrate, Vandavasi and quash the same.

For Petitioners : Mr.C.B.Santhosh Kumar

For Respondent : Mr.C.Raghavan

No.1

Government Advocate (Crl.side)

ORDER

This petition has been filed to quash the proceedings in C.C.No.50 of 2018 on the file of Judicial Magistrate, Vandavasi.

2.It is seen that there was a quarrel between the petitioners and the 2nd respondent, wherein the 2nd respondent trespassed into the paddy field of the petitioners and damaged the crops. Hence, the petitioners have filed a complaint as

against the 2nd respondent and the same was registered in Crime No.156 of 2016 on 05.08.2016 for the offence under Section 147, 148, 447, 427, 294(b) and 506(ii) IPC. Immediately thereafter, a complaint was registered by the 1st respondent in Crime No.157 of 2016 on the same day as against the petitioners and charge sheet was also filed in C.C.No.50 of 2018. Hence, the petitioners have come forward with the present petition to quash the charge sheet filed in C.C.No.50 of 2018.

3.The learned counsel for the petitioners submitted that there are contradiction between the witnesses and completely not corroborating with each and every witnesses and also not attracting any of the charges as alleged by the prosecution. Hence, he prays to quash the proceedings in C.C.No.50 of 2018.

4.The Hon'ble Supreme Court of India has categorically held that the contradiction in the statement regarding 161 statement cannot be tested before this Court under Section 482 Cr.P.C. It can be considered only during the trial. In this regard, 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."

5. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in CrI.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.

6. On perusal of the complaint, it is seen that there are specific allegations as against the petitioners to attract the offences under Section 147, 148, 447, 427, 294(b) and 506

(ii) IPC. Hence, this Court does not find any merits to quash the proceedings in C.C.No.50 of 2018. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are also closed.

7.However, considering the calendar case is of the year 2018, the learned Judicial Magistrate, Vandavasi, is directed to complete the trial within a period of six months from the date of receipt of copy of this order.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Inspector of Police,
Desur Police Station,
Thiruvannamalai District.

2.The Judicial Magistrate
Vandavasi.

3. The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.C.B.Santhosh Kumar, Advocate sr 39389.

Cr1.O.P.No.10292 of 2019
and Cr1.M.P.Nos.5334 & 5335 of 2019

SSI (CO)
SP(29/05/2019)

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