

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.11676 of 2019
and Crl.M.P.Nos.6047 and 6048 of 2019

M.G.Jagatheswar Rao, ... Petitioner / Respondent

Vs.

1.S.Sushmitha
2.Dhanyah (Minor) ... Respondents / Petitioners

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to the proceedings in the impugned maintenance case in M.C.No.486 of 2018 on the file of the learned First Additional Family Court at Chennai and quash the same as illegal.

For Petitioner : Mr.S.Yudhish Padman

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in M.C.No.486 of 2018 on the file of the learned First Additional Family Court, Chennai.

2. It is seen that the petitioner and the first respondent are husband and wife and their marriage was solemnized on 26.10.2015. Due to their wedlock, a female child was born to them. Due to misunderstanding, they are living separately. While being so, the respondents filed a maintenance case in M.C.No.486 of 2018 before the learned First Additional Court, Chennai. Now the petitioner came with this petition to quash the said maintenance case.

3.This Court finds no merits in this petition. However, the points raised by the petitioner is question of fact, it has to be gone into by the trial Court. 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."

4. 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.

5. In view of the above discussion, this Court is not inclined to quash the proceedings in M.C.No.486 of 2018. The petitioner is at liberty to raise all the points before the Court below during the trial. However, considering the 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.

6.With the above directions, this Criminal Original Petition stands disposed of. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

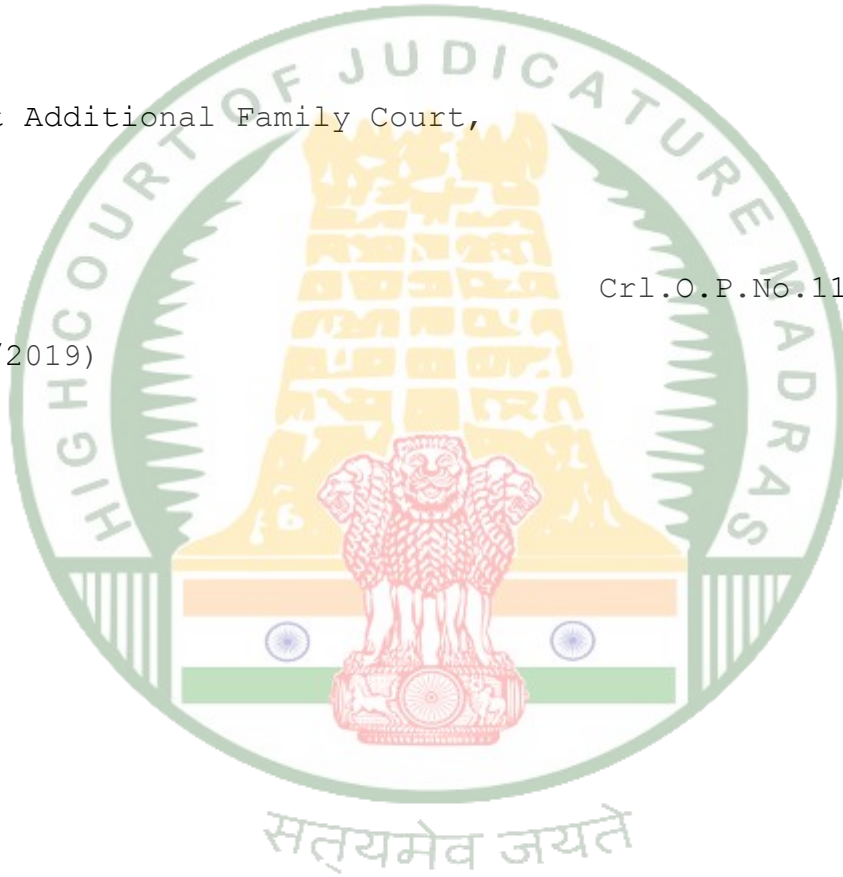
AT

To

The First Additional Family Court,
Chennai.

MR(CO)
SSM(19/06/2019)

Crl.O.P.No.11676 of 2019



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