

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2019

CORAM:

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

Crl.O.P.No.10546 of 2019
and Crl.M.P.No.5427 of 2019

A.Shahira Banu ...Petitioner

Vs.

1.The State,
Rep. by the Inspector of Police,
B-1, North Beach police Station,
Rajaji Salai,
Chennai-600 001
(Crime Ni.41 of 2018)

2.The Assistant Revenue Officer,
Greater Chennai Corporation,
Zone-V, Revenue Department,
Chennai-600 021

..Respondents

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to call for the records in pursuant to the registration of First Information Report in Crime No.141 of 2018 on the file of the First Respondent and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr. R.Barnabas
For RR1 : Mr.C.Raghavan
Govt. Advocate (Crl. Side)

O R D E R

This petition has been filed seeking direction to the 2nd respondent quash the Crime No.141 of 2018, on the file of the 1st respondent police.

2.The petitioner was arrayed as A1 in Crime No.141 of 2018 for the offences punishable under Sections 420, 465, 468 and 471 IPC of the basis of complaint given by the 2nd respondent herein.

3.

3. On perusal of records, it is seen that there was a dispute between the petitioner and the 2nd respondent/Defacto complainant. The petitioner was allotted a shop bearing No.68A, F-Section, situated at Burma Bazaar, Chennai by the 2nd respondent vide its allotted order dated 11.03.1991. From the date of allotment, the petitioner is in possession and enjoyment of the property. On 05.09.2017 the 2nd respondent/defacto complainant had sent a notice and demanded arrears of rent from the petitioner and also they threatened the petitioner. On receipt of the said notice, the petitioner had sent a representation dated 09.09.2017 to the 2nd respondent/ defacto complainant stating that she is ready and willing to pay the rent. Thereafter, the petitioner lodged a complaint before the first respondent police, but the first respondent police refused to take action and advised to approach the Civil Court. The petitioner filed a suit in O.S.No.5518 of 20178 before the VIII Assistant City civil Court, Chennai, an order of Interim Injunction was obtained as against the second respondent/defacto complainant. Thereafter, the second respondent has filed a false complaint against the petitioner before the 1st respondent police on 05.03.2018 and the same was registered in Crime No.141 of 2018 on the file of the respondent police for the offences under Sections 420, 465, 468 and 471 IPC. Under such circumstances, the petitioners herein have filed the present petition to quash the charge sheet filed in Crime No.141 of 2018.

4. The learned counsel for the petitioners submitted that the respondent police without proper investigation has filed the charge sheet as against the petitioners in Crime No.141 of 2018. He further submitted that there are sufficient materials to show that the petitioners did not commit any offence as alleged by the prosecution. Hence, he prays to quash the entire proceedings in Crime No.141 of 2018.

5. 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."

6. 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.

7. On perusal of the complaint, it is seen that there are specific allegations as against the petitioners to attract the offences under Sections 420, 465, 468 and 471 IPC. Hence, this Court does not find any merits to quash the charge sheet in Crime No.141 of 2018. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is also closed.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

vsn

To

1. The Inspector of Police,

B-1, North Beach police Station, Rajaji Salai, Chennai-600 001

2. The Assistant Revenue Officer,

Greater Chennai Corporation, Zone-V, Revenue Department,
Chennai-600 021

3. The Public Prosecutor, High Court, Madras.

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GP (CO)

SP (29/05/2019)