

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No. 14909 of 2019

and

W.M.P.Nos.14883 & 14886 of 2019

Maxworth Home Ltd.,
Rep. by its Authorised Signatory,
Mr.A.Damodharan
Plot No.50-Sunnambu Kolathur,
Chennai - 600 129.Petitioner

Vs.

1. The Commissioner of Police,
Vepery, Chennai.
2. The Deputy Commissioner of Police,
Central Crime Branch,
Vepery, Chennai.
3. The Assistant Commissioner of Police,
Central Crime Branch,
Chennai.
4. The Inspector of Police,
Central Crime Branch,
EDF-1, Team-1,
Office of the Commissioner of Police,
Vepery, Chennai - 600 007.
(Ref: RC.No.12/AC-EDF-1/CCB/COP/PG/2018)

5. P.MaivelanRespondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari or any other appropriate Writ, order or direction to call for records of the fourth respondent pertaining to complaint lodged by the fifth respondent vide Ref.No.RC.No.12/AC-EDF-1/CCB/COP/PG/2018 against the Directors of the petitioner's company and set aside the summons dated 13.03.2019 and 06.05.2019 and the questionnaire dated 04.04.2019 questioning the affairs of the petitioner company since year 2000.

For Petitioner :Mr.A.Ramesh
Senior Counsel for M/s.J.Suresh

For Respondents :Mr.C.Raghavan
Government Advocate (Crl. Side) for R1 to R4

: Mr.N.R.Elango
Senior Counsel for
Mr.N.Kumanan for R5

ORDER

The subject matter of challenge in this petition is the summon issued by the respondent police under sections 91 & 160 of Cr.P.C.

2. Mr.A.Ramesh, learned Senior Counsel appearing on behalf of the petitioner submitted that the respondent police cannot conduct a rowing enquiry even without registering the FIR, based on the complaint given by the private respondent and the respondent police does not have the power or jurisdiction to issue summons under section 160 of Cr.P.C without registration of an FIR and such a summon can be issued only in the course of the investigation which always starts with the registration of FIR.

3. The learned Senior Counsel in order to substantiate his submissions relied upon the following judgments.

1. 2010 SCC Online Mad 2718 (Sriram Sampath Vs. State rep. by Commissioner of Police, Egmore and others).
2. 2004 (1) CTC 130 (Prakash Transports Vs. The Inspector of Police)
3. 2013 SCC Online Mad 3636 (Vetri Medical Agency Vs.State rep. by Inspector of Police)

4. Per contra Mr.N.R.Elango, learned Senior Counsel appearing on behalf of the complainant submitted that even though there is no serious dispute on the position of law with regard to the issuance of summons under section 160 of Cr.P.C., the complaint given to the respondent police clearly makes out a cognizable offence and the respondent police ought to have, at the best, conducted a preliminary enquiry not exceeding 14 days as held by the Hon'ble Supreme Court in Lalitha Kumari Vs. Government of Uttar Pradesh reported in 2013 (6) CTC 353 and thereafter should have proceeded further in accordance with law by registering the FIR and proceeding further with the investigation. The learned Senior Counsel therefore submitted

that appropriate directions may be given to the respondent police to act upon the complaint in accordance with the guidelines given in Lalitha Kumari Vs. Government of Uttar Pradesh reported in 2013 (6) CTC 353 and proceed further with the investigation.

5. This court has carefully considered the submissions made on either side.

6. This Court does not want to go into the merits of the case, at this stage and the petition has to be allowed on the preliminary point of jurisdiction of the respondent police to issue summons under Section 160 of Cr.P.C., and conduct an enquiry even without registering an FIR.

7. It will be useful to rely upon the judgement of this Court in Prakash Transports Vs. Inspector of Police, referred supra, wherein this Court has held as follows.

"2. The learned counsel appearing for the petitioners submits that as no crime was registered by the respondent-police, he has no jurisdiction to issue summons under Section 160 Cr.P.C., compelling the petitioners to appear before him and therefore, the summons has to be quashed. I find some substance in the said contention. The summons, which I have extracted above, shows that the officer did not even mention the crime number in the said summons. The learned Public Prosecutor also submits that no crime was registered by the respondent. If that be the case, it is not understandable as to how he should issue summons, since under Section 160 Cr.P.C., summons could be issued by any police officer making an investigation under that Chapter, which means that investigation is a sine qua non for issuing summons and the investigation can be conducted only in connection with the crime registered in terms of Section 154 Cr.P.C. Since there is no crime registered in terms of Section 154 Cr.P.C., no summons can be issued under Section 160 Cr.P.C., summoning a person to appear before the officer. As the summons summoning the petitioners, issued by the officer, is without jurisdiction, it is quashed. The petition is allowed."

8. The above judgment will squarely apply to the facts of the present case. Admittedly no crime has been registered by the respondent police in terms of Section 154 of Cr.P.C., and therefore the respondent police could not have issued summons under section 160 of Cr.P.C., since the same can be issued by any police officer only in the course of investigation.

9. In view of the above, the impugned summons issued by the fourth respondent is without jurisdiction and hence the same is quashed. It is made clear that it is left open to the fourth respondent to take further action on the complaint pending before it, strictly in accordance with the guidelines given by the Hon'ble Supreme Court in Lalitha Kumari Vs. Government of Uttar Pradesh reported in 2013 (6) CTC 353 and it is made clear that outer limit of 14 days that was fixed by the Hon'ble Supreme Court for conducting preliminary enquiry shall not be exceeded.

Accordingly, this Writ Petition is allowed to the extent indicated above. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

drl/dh
To

1. The Commissioner of Police,
Vepery, Chennai.
2. The Deputy Commissioner of Police,
Central Crime Branch,
Vepery, Chennai.
3. The Assistant Commissioner of Police,
Central Crime Branch,
Chennai.
4. The Inspector of Police,
Central Crime Branch,
EDF-1, Team-1,
Office of the Commissioner of Police,
Vepery, Chennai - 600 007.
(Ref: RC.No.12/AC-EDF-1/CCB/COP/PG/2018)
5. The Public Prosecutor,
High Court, Madras.

+2 ccs to Mr.J.Suresh, Advocate, S.R.No.44208, 45028

W.P.No. 14909 of 2019

GJ(CO)
SSM(25/06/2019)