

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.OP.NO.8293 OF 2017

B.K.Katherhavan

... Petitioner

Vs.

1. State Rep. by Inspector of Police
Karungalpalayam Police Station
Erode District
(In Crime No.612/2016)

2. Malathi

... Respondents

PRAYER:

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the entire records in C.C.No.4 of 2017 on the file of the Judicial Magistrate No.1, Erode and quash the same.

For Petitioner : Mr.P.Bakiyaraj

For Respondents: Mr.M.Mohamed Riyaz
Addl.Public Prosecutor for R1

Mr.M.Guruprasad for R2

ORDER

The Criminal Original Petition has been filed by the petitioner to call for the entire records in C.C.No.4 of 2017 on the file of the Judicial Magistrate No.1, Erode and quash the same.

2.The learned counsel for the petitioner would submit that a false complaint is lodged against the petitioner herein due to previous enmity and the said complaint culminated into a charge sheet and the same is taken on file in C.C.No.4 of 2017 on the file of the Judicial Magistrate and the petitioner is aggrieved over the same and having no other alternative except to approach this court for quashing the same.

3. Heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor.

4. Further, 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, the Hon'ble Supreme Court of India has held 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."

5. Therefore, all the points raised before this Court shall be considered only at the time of trial. Hence, this Court is not inclined to quash the proceedings in C.C.No.4 of 2017 pending on the file of the learned Judicial Magistrate No.1, Erode. However, considering the fact that the C.C. is of the year 2017, the Trial Court is hereby directed to complete the trial within a period of six months from the date of receipt of a copy of this order.

6. Accordingly, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Deputy Registrar (CJ Conf.)

//True Copy//

Sub Assistant Registrar

kas

To

1. The Judicial Magistrate No.I,
Erode.
2. Inspector of Police
Karungalpalayam Police Station
Erode District, (In Crime No.612/2016)

3. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.T.Gowthaman, Advocate, S.R.No.39277
+lcc to Mr.M.Guruprasad, Advocate, S.R.No.39643

CrI.O.P.No.8293 of 2017
and
CrI.M.P.No.5953 & 5954 of 2017

AK(CO)
CS/23/05/2019



WEB COPY