

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2019

CORAM:

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

Crl.O.P.No.12327 of 2017 and
Crl.M.P.No.8050 of 2017

1.Mrs.Ganga Bai,
2.Murugan

...Petitioners/Accused 1 and 4

Vs.

1. The State-rep. by
The Inspector of Police,
K-10, Koyambedu Police Station,
Chennai-600 107.

2. R.S.Madhavan, ...Respondents

[2nd respondent is impleaded as per the order
of the Hon'ble Court dated 05.07.2017 made
in Crl.M.P.No.8395 of 2017 in Crl.O.P.No.12327
of 2017]

Prayer: Criminal Original Petition filed under section 482 of
Criminal Procedure Code, to call for the records in C.C.No.388
of 2011 now pending on the file of the learned Chief
Metropolitan Court, Allikulam, Chennai and quash the same.

For Petitioner : Mr.T.S.Rajamohan

For R1 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

For R2 : No appearance

ORDER

This petition has been filed to quash the proceedings in
C.C.No.388 of 2011, on the file of the learned Chief
Metropolitan Magistrate, Allikulam, Chennai.

2. The petitioners are arrayed as accused in Crime No.650 of
2010 for the offences punishable under Sections 147, 448, 506
(ii) r/w Section 49 IPC r/w 3(1) of TNPPDL Act and Section 34 of
IPC of the basis of complaint given by the 2nd respondent herein.

After detailed investigation, the 2nd respondent filed a charge sheet in C.C.No.388 of 2011 before the learned Chief Metropolitan Magistrate, Egmore, Chennai.

3. On perusal of records, it is seen that the dispute between the petitioners and the defacto complainant is with regard to land property. It is seen suits have also been filed by both the parties and in O.S.No.5925 of 2008, the learned XVI Assistant Judge, City Civil Court, Chennai, appointed an Advocate Commissioner and issued direction to the Advocate Commissioner to cause inspection of the properties, survey the land and file a report. The Advocate Commissioner is yet to file a report. Under such circumstances, the petitioners have filed the present petition to quash the proceedings in C.C.No.388 of 2011, pending on the file of the learned Chief Metropolitan Magistrate, Allikulam, Chennai.

4. The learned counsel for the petitioner submitted that the respondent police without proper investigation filed a charge sheet as against these petitioners in C.C.No.388 of 2011, on the file of the learned Chief Metropolitan Magistrate, Allikulam, Chennai. He further submitted that there are sufficient materials to show that the petitioners are the absolute owners of the said land and they did not commit any offence as alleged by the prosecution. Hence, he prays to quash the proceedings in C.C.No.388 of 2011.

5. It is relevant to extract the following observations made by the Hon'ble Supreme Court in the case of Sau. Kamal Shivaji Pokarnekhar vs. the State of Maharashtra & ors., in CrI.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. On perusal of the complaint, it is seen that there are specific allegations as against the petitioners to attract the offences under Sections 147, 448, 506(ii) r/w Section 49 IPC r/w 3(1) of TNPPDL Act and Section 34 of IPC. Hence, this Court does not find any merits to quash the proceedings in C.C.No.388 of 2011. Accordingly, this Criminal Original Petition is dismissed. However, considering the nature of allegation, the 1st respondent is directed to conduct an enquiry with all the parties concern and the counter part and file a final report within a period of three months from the date of receipt of copy of this order. Connected miscellaneous petition is closed.

7. However, considering the age of the 1st petitioner, her personal appearance before the trial Court in connection with C.C.No.388 of 2011 is dispensed with and she shall be represented by a counsel after filing appropriate application. The 1st petitioner shall be present before the Court at the time

of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment. The learned Chief Metropolitan Magistrate, Allikulam, Chennai, is directed to complete the trial within a period three months from the date of receipt of copy of this order.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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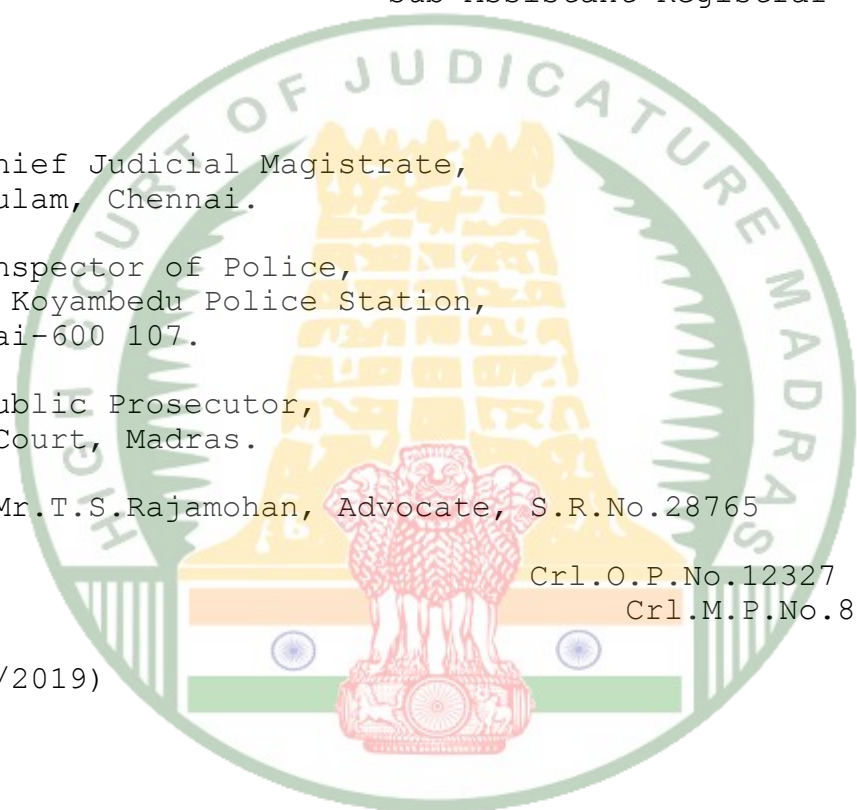
To

1. The Chief Judicial Magistrate,
Allikulam, Chennai.
2. The Inspector of Police,
K-10, Koyambedu Police Station,
Chennai-600 107.
3. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.T.S.Rajamohan, Advocate, S.R.No.28765

CrI.O.P.No.12327 of 2017 and
CrI.M.P.No.8050 of 2017

SAI (CO)
SSM(22/05/2019)

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. The words 'HIGH COURT OF JUDICATURE MADRAS' are written in a green circle around the gopuram. Below the gopuram is a red lion capital on a base. At the bottom of the seal, the Sanskrit motto 'सत्यमेव जयते' (Satyameva Jayate) is written in Devanagari script.

सत्यमेव जयते

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