

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.16171 of 2017
and Crl.M.P.Nos.9989 & 9990 of 2017

Ravi

... Petitioner

Vs.

1.The State represented by
The Inspector of Police,
R7, K.K.Nagar Police Station,
Chennai – 78.

2.Prabaharan

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to the charge sheet in P.R.C.No.161 of 2017 on the file of the learned Metropolitan Magistrate – XXIII Saidapet, Chennai in crime No.573 of 2013 dated 21.03.2013 on the file of the 1st respondent, charges laid against the petitioner and quash the same as illegal.

For Petitioner : No appearance

For Respondent 1 : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

For Respondent 2 : Mr.V.Balasubramanian

ORDER

This Criminal Original Petition has been filed to quash the proceedings in P.R.C.No.161 of 2017 on the file of the learned Metropolitan Magistrate – XXIII Saidapet, Chennai, having been taken cognizance for the offences punishable under Sections 120B, 147, 109 r/w 302 and 214, 506(i) of IPC.

2. The learned Additional Public Prosecutor would submit that there are specific allegations as against the petitioner to attract the offence under Section 120B, 147, 109 r/w 302 and 214, 506(i) of IPC. He further submitted that all the points raised by the petitioner have to be considered only during the trial. Therefore, he prayed to dismiss this petition.

3. Heard Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent.

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4. It is seen from the charge there are specific averments to attract the offences as against the petitioner. Further it is also seen that there are

materials to connect the petitioner to the offences. More over all the points raised by the petitioner have to be considered only during trial.

5. In this regard, it is relevant to rely upon the Judgment of 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** and the relevant paragraphs are extracted hereunder:

"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."

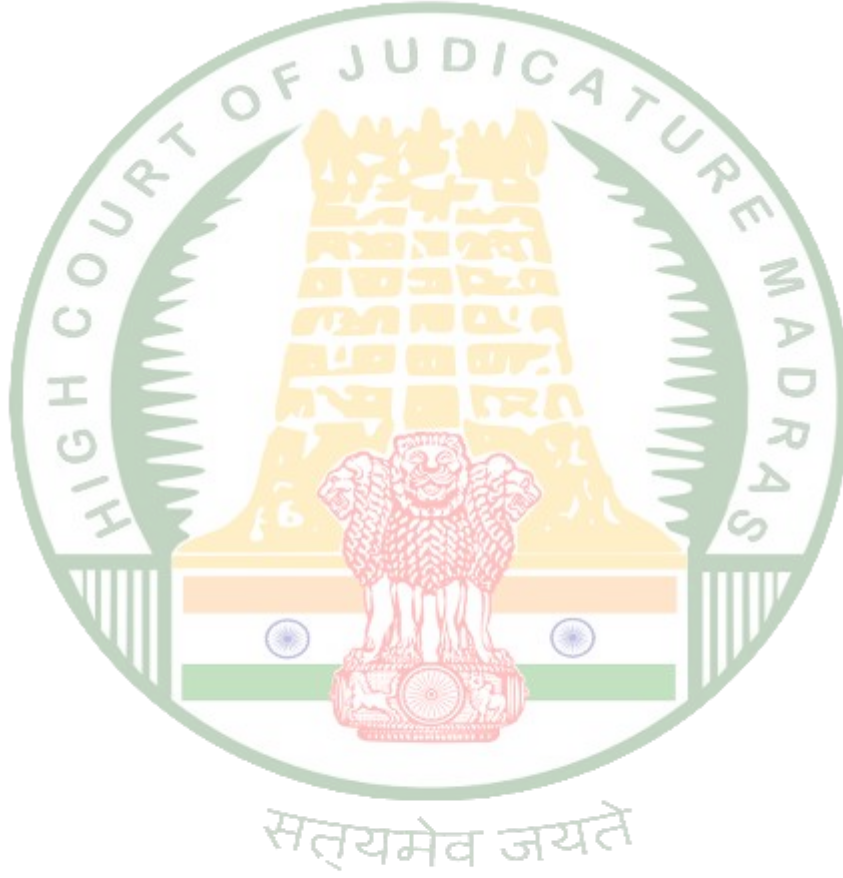
6. In view of the above discussion, this Court is not inclined to quash the proceedings in P.R.C.No.161 of 2017. However, learned XXIII Metropolitan Magistrate, Saidapet, Chennai is directed to commit the proceedings within a period of two weeks from the date of receipt of a copy of this Order. On receipt of the same, the trial Court is directed to take cognizance and to complete the trial within a period of six months from the date of receipt of such committal.

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

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Index: Yes/No
Internet: Yes/No
Speaking/Non-speaking Order

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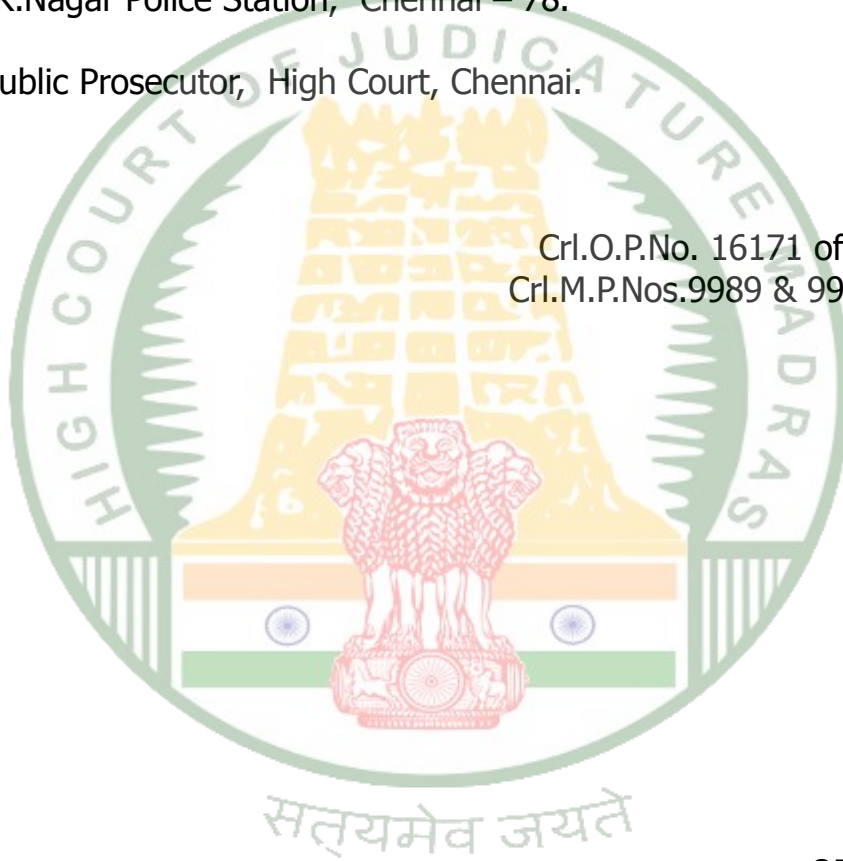
G.K.ILANTHIRAIYAN, J.

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To

1. The XXIII Metropolitan Magistrate, Saidapet, Chennai
2. The The Inspector of Police,
R7, K.K.Nagar Police Station, Chennai – 78.
3. The Public Prosecutor, High Court, Chennai.

Crl.O.P.No. 16171 of 2017 and
Crl.M.P.Nos.9989 & 9990 of 2017



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Crl.O.P.No.16171 of 2017

and

Crl.MP.No. 9990 of 2017

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This matter is posted today before this Court under the caption 'For Being Mentioned' at the instance of the learned counsel appearing for the petitioner.

2. The learned counsel appearing for the petitioner would submit that this Court, by an order dated 05.04.2019 in Crl.O.P.No.16171 of 2017, has directed the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, to commit the proceedings in PRC.No.161 of 2017 within a period of two weeks from the date of receipt of a copy of the order and on receipt of the same, the trial court is directed to take cognizance and to complete the trial within a period of six months from the date of receipt of such committal. He further submitted that the proceedings are in pendency for more than five years and since the petitioner is a self employee, he has to take care of his business by himself and it is difficult to attend the court each and every time.

3. The learned Additional Public Prosecutor has submitted that the petitioner alone may be ordered dispensed with.

4. Considering the submissions made by the learned counsel for both

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gv

sides, the appearance of the petitioner alone is dispensed with. The

Registry is directed to carryout the necessary amendments in the order dated 05.04.2019 in Crl.O.P.No.16171 of 2017 as "the appearance of the petitioner alone is dispensed with" in paragraph 6 of the order and issue order copy afresh.

20.07.2020

(2/2)

gv



Crl.O.P.No.16171 of 2017
and
Crl.MP.No. 9990 of 2017

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