

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2019

CORAM:

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

CRL.OP.No.1982 of 2017
and CRL.M.P.Nos.1424 and 1425 of 2017

1.Anajappa

2.Murugesan

3.Sekar Babu

... Petitioners/Accused

Vs.

1. State

Rep. by Special Sub-Inspector of Police,
Hosur Town Police Station,
Krishnagiri District.

...1st Respondent

2.K.Raji

...2nd Respondent/Complainant

PRAYER:

Criminal Original Petition filed under Section 482 Cr.P.C.,
to call for the records pertaining to the case in P.R.C.No.06 of
2016 on the file of the Judicial Magistrate No.II, Hosur,
Krishnagiri District and quash the same as illegal, incompetent
and ultravires.

For Petitioners: Mr.R.Jayaprakash

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

Mr.N.Elayaraja for R2

WEB COPY

O R D E R

The Criminal Original Petition has been filed to quash the
proceedings in P.R.C.No.06 of 2016, on the file of the learned
Judicial Magistrate No.II, Hosur, Krishnagiri District as
illegal, incompetent and ultravires.

2.The learned Counsel appearing for the petitioner would submit that the petitioners are innocent persons and they have not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.6 of 2013 for the offence under Sections 294 (b), 380, 457 and 506 (i) of I.P.C., 1860 and under Section 3(1) TNPPD Act, 1992, as against the petitioners and filed charge sheet in C.C.No.116 of 2015 before the Judicial Magistrate, No.II, Hosur, Krishnagiri District. Hence, he prayed to quash the same.

3.The learned Additional Public Prosecutor would submit that there are specific allegations as against the petitioners to attract the offence under Sections 294 (b), 380, 457 and 506 (i) of I.P.C., 1860 and under Section 3(1) TNPPD Act, 1992. He further submitted all the points raised by the petitioners have to be considered only during the trial. Therefore, he prayed to dismiss this petition.

4.Heard, Mr.R.Jayaprakash, learned counsel appearing for the petitioners, Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent and Mr.N.Elayaraja learned counsel appearing for the second respondent and perused the materials available on record.

5.It is seen from the charge there are specific averments to attract the offences as against the petitioners. Further, it is also seen that there are materials to connect the petitioners to the offences. More over, all the points raised by the petitioners have to be considered only during the trial. The petitioners at liberty to raise all the points before the Court below during the trial.

6.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 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."

7. In view of the judgment cited supra, this Court is not inclined to quash the proceedings in P.R.C.No.6 of 2016, on the file of the Judicial Magistrate No.II, Hosur, Krishnagiri District. However, considering the age of the first petitioner, the personal appearance of the first petitioner is alone dispensed with and he shall be represented by a counsel after filing appropriate application. The first 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 Trial Court is directed to

complete the matter within a period of two weeks from the date of receipt of a copy of this order.

8. With the above observation and direction, the Criminal Original Petition is disposed of. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

pam

To

1. The Judicial Magistrate No.II,
Hosur, Krishnagiri District.
2. Do Thro' The Chief Judicial Magistrate,
Krishnagiri District.
3. The Special Sub-Inspector of Police,
Hosur Town Police Station,
Krishnagiri District.
4. The Public Prosecutor,
High Court, Chennai - 104.

+1cc to Mr.R.Jayaprakash, Advocate, S.R.No.28619

+1cc to Mr.N.Elayaraja, Advocate, S.R.No.28444

CRL.OP.No.1982 of 2017
and CRL.M.P.Nos.1424 and 1425 of 2017

EV(CO)
CS/23/05/2019

WEB COPY