



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.10.2019

CORAM

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

CRL.O.P. (MD) .No.8657 of 2019

and

CRL.M.P. (MD) Nos.5420 and 5421 of 2019

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1.K.R.Hariharan

2.J.Anandavalli

... Petitioners/Accused Nos.1 & 2

Vs.

1.State represented by

The Inspector of Police,

District Crime Branch,

Nagercoil,

Kanyakumari District.

Crime No.36 of 2009.

: 1st Respondent/Complainant

2.Swami Brahmapadananda Sarawathi @

P.H.Krishnan Namboothiri,

Sree Rama Desa Ashram,

Sree Neelakantapuram,

Thundathil Post,

Trivandrum

: 2nd Respondents/Defacto Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the impugned charge sheet in C.C.No.125 of 2011 on the file of the Judicial Magistrate Court No.I, Nagercoil, Kanyakumari District and quash the same.

For Petitioners

: Mr.G.Karuppasamy Pandiyan

For R1

: Mr.K.Suyambulinga Bharathi,

Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed to quash the proceeding in C.C.No.125 of 2011 on the file of the Judicial Magistrate Court No.I, Nagercoil, Kanyakumari District.

2.The learned Counsel appearing for the petitioners would submit that the petitioners are innocents 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.36 of 2009, for the offences under Sections 120(b), 409, 420, 468, 471, 477 and 201 of IPC as against the petitioners. Hence he prayed to quash the same.



3.The learned Government Advocate (criminal side) would submit that the investigation is still pending and this petition is in premature stage and hence, he prayed for dismissal of this petition.

4.Heard both sides and perused the materials available on record.

5.It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.255 of 2019** dated **12.02.2019 - Sau. Kamal Shivaji Pokarnekhar vs. the State of Maharashtra & ors.**, 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."

6. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.579 of 2019** dated **02.04.2019** in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr.**, as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

7. In view of the above citations, the criminal proceedings against the petitioners cannot be quashed at its threshold and it has to be gone in to by full fledged trial. Further, in this case, trial has also been commenced. Therefore, the charges cannot be quashed at this stage and this criminal original petition is liable to be dismissed.

8. Accordingly, this criminal original petition is dismissed with the liberty to the petitioners to raise all the grounds before the trial Court. Consequently, connected miscellaneous petitions are also dismissed. However, the learned Judicial Magistrate No.I, Nagercoil, Kanyakumari District, is directed to complete the trial and dispose of the case, within a period of six (06) months from the date of receipt of a copy of this order. The personal appearance of the petitioners before the trial Court is dispensed with, except the



dates on which, the trial Judge insisted the petitioners for their appearance.

Sd/-

Assistant Registrar ()

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// True Copy //

Sub Assistant Registrar(CS)

das

To

- 1.The Judicial Magistrate No.I, Nagercoil,
Kanyakumari District.
- 2.The Inspector of Police,
District Crime Branch,
Nagercoil,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G. KARUPPASAMY PANDIAN, Advocate SR-91131.

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