



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.09.2019**

CORAM:

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

**Crl.O.P.(MD)No. 9409 of 2019**

**and**

**Crl.M.P(MD) Nos. 5977 & 5978 of 2019**

WEB COPY

1. Muthusamy
2. Lakshmi
3. Rajeshwari
4. Manikandan

... Petitioners/Accused Nos.1 to 4  
Vs

1. The State rep. by  
The Sub-Inspector of Police  
Villoor Police Station  
Madurai District.  
Crime No. 67 of 2018.

...1<sup>st</sup> Respondent/Complainant

2. Savithiri
- ...2<sup>nd</sup> Respondents/Defacto Complainant

**Prayer:** Criminal Original Petition filed under Section 482 Cr.P.C. to Call for the records relating to the impugned Charge Sheet in C.C. No. 10 of 2019 on the file of the learned District Munsif cum Judicial Magistrate, Peraiyur, Madurai District and quash the same against the petitioners.

For Petitioner : Mr.N. Marimuthu

For Respondent : Mr.K.Suyambulinga Bharathi  
No.1 Government Advocate (Crl. Side)

**ORDER**

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.10 of 2019 on the file of the learned District Munsif cum Judicial Magistrate, Peraiyur, Madurai District for the offences under Sections 294(b), 323 and 506(i) of IPC and Section 4 of TNPHW Act, 2002.

2. The learned counsel for the petitioner would submit that there was previous enmity between the petitioners and the second respondent regarding land dispute the second respondent has lodged a complaint before the respondent police, based on the complaint, the first respondent police registered a case against these petitioners in Crime No.67 of 2018 for the offences under Section 294(b), 323, 506(i) of I.P.C., subsequently, the first respondent filed a final report and altered the sections as 294(b), 323, 506(i) of I.P.C., and Section 4 of TNPHW Act, 2002. He would further submit that the second respondent uncle, namely, Ramalinga Goundar had purchaed the property in respect of Old S.No.84/10, new S.No.74/10B measuring 2.5



cents situated in Kenjampatti Village, Peraiyur Taluk, Madurai District, through a registered sale deed Doc. No.966/1981 dated 19.06.1981 and Doc. No.1136/1984 dated 11.10.1984, but the second respondent's husband and his brother's names were wrongly included in the Patta of the petitioners aforesaid property. Hence, they prayed to quash the proceedings in C.C.No.10 of 2019.

3. The learned Government Advocate(Crl.Side) would submit that after lodging of the complaint they examined witnesses and recorded statements under Section 161(3) Cr.P.C and the statements recorded by them corroborated with each other and the offences under Sections 294(b), 323, 506(i) of I.P.C., and Section 4 of TNPHW Act, 2002 would attract as against the petitioners. He would also submit that they are about to take the trial in C.C.No. 10 of 2019 on the file of the learned District Munsif cum Judicial Magistrate, Peraiyur. Therefore they sought for dismissal of the quash petition.

4. Heard Mr.N. Marimuthu, learned counsel appearing for the petitioner and Mr.K.Suyambulinga Bharathi, learned Government Advocate(Crl.Side) appearing for the first respondent.

5. The petitioners are arrayed as A1 to A4 in Crime No.67 of 2018. The case was registered for the offences under Sections 294 (b), 323, 506(i) of I.P.C., subsequently, altered the sections as 294(b), 323, 506(i) of I.P.C., and Section 4 of TNPHW Act, 2002. While the second respondent/defacto complainant cleaning her house, the petitioners went to the second respondent's house and try to assault the defacto complainant and her sister by using wooden log and also threatened her by using filthy language with dire consequences. It is also seen from the statement recorded under Section 161 Cr.P.C that there are evidences to attract the offence under Sections 294(b), 323, 506(i) of I.P.C., and Section 4 of TNPHW Act, 2002. 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. It is seen from the First Information Report that there is a specific allegation as against the petitioners, which has to be investigated. Further the FIR is not an encyclopedia and it need not contain all facts. Further, it cannot be quashed in the threshold. This Court finds that the FIR discloses prima facie commission of cognizable offence and as such this Court cannot interfere with the investigation. The investigating machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

8. Considering the facts of the case, the trial court is directed to complete the trial within a period of Six (6) months from the date of receipt of a copy of this order, without influenced by any of the observations made above.

9. The personal appearance of the petitioners are dispensed with and they shall be represented by a counsel after filing appropriate application. The petitioners 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.

10. In fine, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)



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To

1. The District Munif -Cum-Judicial Magistrate,  
Peraiyur,  
Madurai District.

2.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

3. The Sub-Inspector of Police  
Villoor Police Station  
Madurai District.

+1 CC to M/s.N.MARIMUTHU, Advocate ( SR-86051[F] dated 10/09/2019 )

**Crl.O.P. (MD) No. 9409 of 2019**  
**10.09.2019**

KK/SAR/04.10.2019/5P-5C/