



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.09.2019

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No.11577 of 2019

and

Crl.M.P.(MD) No.7271 of 2019

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1.M.Ranjithkumar
2.Manjanapetchi
3.M.Jeyakumar
4.R.Sudha

... Petitioners

Vs

1.Annakodi

2.The Inspector of Police,
Chekkanoorani Police Station,
Madurai District
crime No.120 of 2018.

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the entire records pertaining to the charge sheet in C.C.No.77 of 2019 and quash the same pending on the file of the Judicial Magistrate No.II, Usilampatti.

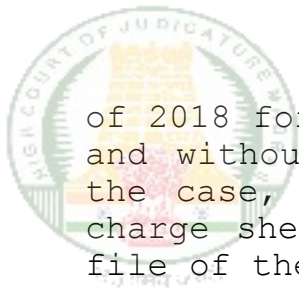
For Petitioner : Mr.R.Ramasamy

For Respondents : Mr.K.Suyambulinga Bharathi,
G.A. (Crl. Side) for R2

ORDER

This petition has been filed to quash the charge sheet in C.C.No.77 of 2019 on the file of the Judicial Magistrate No.II, Usilampatti, having taken cognizance for the offence under Sections 406 and 420 of I.P.C.

2.The learned Counsel appearing for the petitioners would submit that the first petitioner is a practising advocate and doing part-time journalist for the past many years. Initially, a complaint has been lodged by the defacto complainant with regard to the dispute of borrowal of money. The other accused persons are the family members of the first accused. After the said complaint, there was a settlement between the petitioners as well as the defacto complainant and recording the same, the said complaint was closed on 06.03.2018. However, unfortunately, on the very same complaint, the second respondent issued CSR No.35 of 2018 dated 19.03.2018 and the same has been registered as FIR in crime No.120



of 2018 for the offence under Sections 406, 420 and 294(b) of I.P.C, and without considering the above said facts and circumstances of the case, the 2nd respondent conducted the investigation and filed charge sheet, which was taken on file in C.C.No.77 of 2019 on the file of the Judicial Magistrate No.II, Usilampatti.

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3.The learned counsel appearing for the petitioners further submitted that the offences under Sections 406 and 420 of IPC would not even attract as against the petitioners, since the 3rd petitioner borrowed the money from the defacto complainant and on the basis of the communication dated 04.03.2018, they have arrived at a compromise between them and hence, absolutely, there is no allegation about job rocketing as alleged in the charge sheet as against the petitioners. Now, the defacto complainant came with a new set of allegation and it was registered and accordingly, charge sheet has been filed as against the petitioner. Therefore, he prayed for quashment of the charge sheet.

4.The learned Government Advocate (criminal side) appearing for the 2nd respondent would submit that from the complaint itself, it reveals that it is a job rocketing as the petitioners by giving false promise to get job, they received money and thereafter, they did not provide any job to the son of the defacto complainant and they also refused to return the money. The statements of 161(3) of Cr.P.C. of the witnesses also would reveal the same and there are categorical materials to attract the offence under Sections 406 and 420 of I.P.C. Now, the case is in trial stage pending before the learned Judicial Magistrate No.II, Usilampatti and hence, he prayed for dismissal of the application.

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

6.All the petitioners are arraigned as A1 to A4. According to the defacto complainant, her son completed Post Graduate in Engineering and he is searching a job. At that juncture, the accused persons have promised to get job for her son in the Transport Corporation as Assistant Engineer and received a sum of Rs.10 lakhs as advance. In fact, the said amount has been paid to the accused persons after pledging some immovable properties. They after, the accused persons cheated the defacto complainant without getting any job to the defacto complainant's son. It is seen from the statements recorded from the defacto complainant and other supporting witnesses, there are materials to attract the offences under Sections 406 and 420 of I.P.C.

7.It is 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 in the case of Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors., as follows:-

<https://hcservices.ecourts.gov.in/hcservices/>. The only point that arises for our



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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.

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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



complaint, the criminal proceeding shall not be interdicted."

8.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.

9.Following the above said decisions and considering the facts and circumstances, this Court is of the view that the points raised by the learned counsel for the petitioners can be gone in to a trial by the trial Court and as such this Court cannot interfere with the same.

10.In view of the above discussion, this Court is not inclined to quash the charge sheet in C.C.No.77 of 2019 pending on the file of the Judicial Magistrate No.II, Usilampatti. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (Crl.Side)

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Sub Assistant Registrar(CS)



To

1.The Judicial Magistrate No.II, Usilampatti.

2. The Inspector of Police,
Chekkanoorani Police Station,
Madurai District.

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

Order made in
CRL.O.P (MD) No.11577 of 2019
03.09.2019

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JMN(24.09.2019) 5P : 4C