



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.09.2019

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

CRL.O.P. (MD) .No.2103 of 2018

and

CRL.M.P. (MD) Nos.926 and 927 of 2018

Sri Rama Subramanian

...Petitioner/ Accused No.1

Vs.

1.State represented by

The Inspector of Police,
Radhapuram Police Station,
Tirunelveli District.
Crime No.123 of 2011.

... 1st Respondent/ Complainant

2.Suyambu

...2nd Respondent/ Defacto Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records in C.C.No.17 of 2017, on the file of the Special Court for Land Grabbing Cases, Tirunelveli District and to quash the same.

For Petitioner : Mr.K.Prabhu

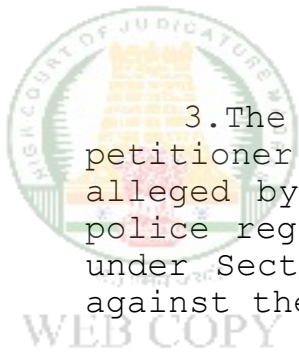
For R1 : Mr.K.Suyambulinga Bharathi,
Government Advocate (Crl.Side)

For R2 : Mr.S.Palanivelayutham

ORDER

This Criminal Original Petition has been filed to quash the proceeding in C.C.No.17 of 2017, on the file of the Special Court for Land Grabbing Cases, Tirunelveli District.

2.The case of the prosecution is that there was a civil dispute between the petitioner and the defacto complainant, due to which, the defacto complainant lodged a complaint against the petitioner and others. On receipt of the complaint, the respondent police registered a case in Crime No.123 of 2011 and after completion of investigation final report was filed and the same taken cognizance in C.C.No.17 of 2017 on the file of the Special Court for Land Grabbing Cases, Tirunelveli District.



3.The learned counsel for the petitioner would submit that the petitioner is an innocent and he has not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.123 of 2011, for the offences under Sections 1465, 467, 468, 471 and 120 B and 420 of I.P.C. as against the petitioner and others.

4. Heard Mr.K.Prabhu, learned counsel appearing for the petitioner and Mr.K.Suyambulinga Bharathi, learned Government Advocate (Criminal Side) appearing for the first respondent and Mr.S.Palanivelayutham, learned counsel appearing for the second respondent.

5.It is seen from the First Information Report that there are specific allegation as against the petitioner, 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.

6.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 Pokarnekar 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.

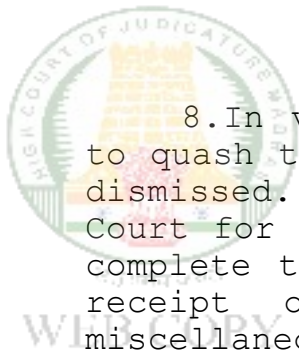
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9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint 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 accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

7. 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



8.In view of the above discussion, this Court is not inclined to quash the Charge Sheet. Hence this Criminal Original Petition is dismissed. Since the case is of the year 2017, the learned Special Court for Land Grabbing Cases, Tirunelveli District, is directed to complete the trial within a period of six months from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar

To

- 1.The Special Court for Land Grabbing Cases,
Tirunelveli District.
- 2.The Inspector of Police,
Radhapuram Police Station,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.PRABHU, Advocate (SR-90502[F] dated 30/09/2019

CRL.O.P.(MD) .No.2103 of 2018 and
CRL.M.P.(MD) Nos.926 and 927 of 2018
30.09.2019

das

MS/15.10.2019/4P.5C