



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.09.2019

CORAM:

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

WEB COPY

CRL.O.P.(MD) No.2268 of 2018

and

CrI.M.P(MD) Nos. 1025 and 1026 of 2018

1. Shalma
2. JahirKhan
3. Mubarak

... Petitioners/Accused No.3,4 & 5

Vs.

1. The State rep by
The Sub Inspector of Police,
All Women Police Station
Dindigul

... 1st Respondent/Complainant

- 2.A.Shakitha Banu

... Respondent/ Defacto Complaint

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to Call for the records pertaining to the case in C.C.No. 410 of 202 on the file of the learned Judicial Magistrate No.II, Dindigul and quash the same in respect of the petitioners alone.

For Petitioner : Mr.K.HemaKarthikeyan

For Respondents

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

For R2 : Mr.K.Gokul

O R D E R

This petition has been filed to quash the proceedings in C.C.No. 410 of 202 on the file of the learned Judicial Magistrate No.II, Dindigul , as against this petitioners alone.

2. The learned Counsel appearing for the petitioner would submit that the petitioners are innocent 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 24 of 2012 for the offences under Sections 294(b), 498(A), 406, 109 of IPC, as against the petitioners and taken cognizance in C.C.No.401 of 2012. Hence he prayed to quash the same.

3. The learned Government Advocate(Crl.Side) would submit that some of the witnesses have been examined in this case. He would also submit that Non Bailable warrant is pending against A1 and A3 and other accused persons are regularly appearing before the trial court.



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

5. It is seen from the First Information Report that there is a 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. 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:-

"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."

It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Cr1.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.

6. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No. 410 of 202 on the file of the learned Judicial Magistrate No.II, Dindigul. Hence this Criminal Original Petition stands dismissed. Consequently, connected



miscellaneous petition in Crl.M.P(M)D No. 1026 of 2018 is ordered and Crl,M.P(MD) No.1025 of 2018 is closed.. However, the trial court is directed to complete the trial within a period of six months from the date of receipt of a copy of this Order.

7. Considering the above facts and circumstances of the case, the first petitioner is directed to recall her warrant before the trial court by filing appropriate petition and thereafter 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.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

Sub Assistant Registrar(CS)

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To:

1. The Judicial Magistrate No.II, Dindigul
2. The Sub Inspector of Police,
All Women Police Station
Dindigul
3. The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai

+1CC TO MR.K.HEMAKARTHIKEYAN, Advocate Sr. No.89121

+1CC TO MR.K.GOKUL, Advocate Sr. No. 89114

CRL.O.P.(MD) No.2268 of 2018

and

Crl.M.P(MD) Nos. 1025 and 1026 of 2018

24.09.2019

SMR(CO)

TR(09.10.2019) 4P 6C