



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **18.09.2019**

CORAM

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

WEB COPY

CRL.O.P(MD)No.2932 of 2018
and
CrI.M.P.(MD)No.1335 of 2018

Solaimalai

... Petitioner/ Sole Accused

Vs.

1.State rep. by

Sub Inspector of Police,
Rajapalayam North Police Station,
Virudhunagar District.

(In Crime No.781 of 2017)

...1st Respondent / Complainant

2.Kamatchi Chettiyar

...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in respect of the case in C.C.No.360 of 2017 on the file of the Judicial Magistrate Court, Rajapalayam, Virudhunagar District and quash the same as illegal, violation of law.

For Petitioner : Mr.M.Jothi Basu

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

O R D E R

This petition has been filed to quash the proceedings in C.C.No.360 of 2017 on the file of the learned Judicial Magistrate Court, Rajapalayam, Virudhunagar District as against the petitioner.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the first respondent and perused the materials available on records.

3. A careful perusal of entire materials available on record, the charge sheet discloses a *prima facie* offence against the petitioner and there is no reason to interfere with the same. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **CrI.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.

.....

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."

WEB COPY

4. 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.

5. Hence, the criminal original petition is dismissed. However, considering the fact that the trial is pending from the year 2017, the learned Judicial Magistrate, Rajapalayam, Virudhunagar District, is directed to proceed with the trial and complete the same within a period of four months from the date of receipt of a copy of this order.

6. At this juncture, the learned Counsel for the petitioner submitted that the presence of the petitioner before the Trial Court may be dispensed with.

7. Accepting the said submission, the personal appearance of the petitioner is dispensed with and he shall be represented by a counsel after filing appropriate application. The petitioner 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.



8. Accordingly, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(AD-I)

WEB COPY/TRUE COPY/

Sub Assistant Registrar

vsd

To

- 1.The Judicial Magistrate,
Rajapalayam, Virudhunagar District,
- 2.The Sub Inspector of Police,
Rajapalayam North Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.RAJARAM, Advocate (SR-87484[F] dated 18/09/2019)

+1 CC to M/s.M.JOTHI BASU, Advocate (SR-87602[F] dated 19/09/2019)

CRL.O.P(MD)No.2932 of 2018

and

Cr1.M.P. (MD)No.1335 of 2018

18.09.2019

JM/10.10.2019/4P/6C