



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.09.2019

CORAM:

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

Crl.O.P. (MD)No.2995 of 2018

and

Crl.M.P(MD) Nos. 1364 and 1365 of 2019

WEB COPY

1. Valsala
2. Arunraj
3. Selvaraj

... Petitioners

Vs

1. The Sub Inspector of Police
V.K.Pudur Police Station
Tirunelveli District.
(Crime No.98/2012)

2. Packialakshmi

... Respondents

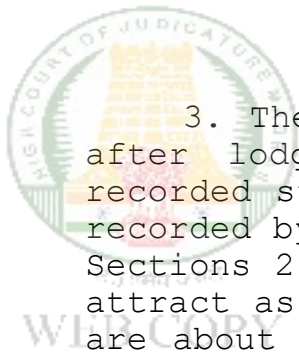
Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to Call for the petitioner in STC No.84 of 2017 on the file of the Judicial Magistrate, Alangulam, Tirunelveli District and to quash the same.

For Petitioner : Mr.S.Senthil Sankara Natha kumar
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 STC No.84 of 2017 on the file of the Judicial Magistrate, Alangulam, Tirunelveli District for the offences under Sections 294(b), 506(i) of IPC and Section 4 of TNPHW Act.

2. The learned counsel for the petitioners would submit that the petitioners had already lodged a complaint against the defacto complainant. The allegation against the defacto complainant is that on 25.01.2011 the petitioners went to the defacto complainant's house and asked money and at that time the defacto complainant gave Rs.24,000/- to the third petitioner and on 17.07.2011 the the defacto complainant gave two sovereigns of gold jewels to the first and second petitioner. Thereafter on 26.07.2012 at about 10.00 a.m the defacto complainant went to the petitioner's house and asked to return the amount and gold jewels , the petitioners abused the defacto complainant with filthy language and threatened with dire consequences. . He further submit that the offences under Sections 294(b) and 506(i) of IPC and Section 4 of TNPHW Act would not attract as against the petitioner and there are no ingredients to attract the offences under Sections 294(b) and 506(i) of IPC and Section 4 of TNPHW Act. Hence he prayed to quash the same.



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) and 506(i) of IPC and Section 4 of TNPHW Act would attract as against the petitioners. He would also submit that they are about to take the trial in STC No. 84 of 2017 on the file of the learned Judicial Magistrate, Alangulam. Therefore he sought for dismissal of the quash petition.

4. Heard Mr.S.Senthil Sankara Natha Kumar, learned counsel appearing for the petitioners and Mr.K.Suyambulinga Bharathi, learned Government Advocate(Crl.Side) appearing for the first respondent.

5. There are totally three accused in Crime No.98 of 2012 in which the petitioners are arrayed as A1 to A3. The case was registered for the offences under Sections 294(b) and 506(ii) of IPC and Section 4 of TNPHW Act. While the defacto complainant came to the house of the petitioners and asked her gold ring, the petitioners abused the defacto complainant and threatened with dire consequences . It is also seen from the statement recorded under Section 161 Cr.P.C that there are evidences to attract the offences under Sections 294(b) and 506(i) of IPC and Section 4 of TNPHW Act. 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."

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.

8. In view of the above discussion, this Court is not inclined to quash the proceedings in STC No. 84 of 2017 on the file of the Judicial Magistrate, Alangulam, Tirunelveli District . Hence this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed. However, the trial Court is directed to complete the trial within a period of three months from the date of receipt of copy of this Order.

Sd/-

Assistant Registrar (P AND A)

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Judicial Magistrate, Alangulam,
Tirunelveli District
2. The Sub Inspector of Police
V.K.Pudur Police Station
Tirunelveli District
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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and

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AAV

KK/SAR/15.10.2019/4P-4C/