



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23.09.2019
CORAM :

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

WEB COPY

Cr1.O.P. (MD)No.318 of 2018
and
Cr1.M.P. (MD)No. 110 of 2018

Pounraj

... Petitioner/1st Accused

Vs.

1. The State of Tamilndu,
Rep by Sub Inspector of Police,
Ambasamudram Police Station,
Tirunelveli District.

... 1st Respondent/Complainant

2.S.R.Kalyana Venkatrama Raja

... 2nd Respondent/Defacto
complainant

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to call for the records in FIR No.340/2017 dated 21.08.2017 on the file of the 1st respondent and quash the same regarding this petitioner.

For Petitioner : Mr.N.Ga.Nataraj

For R1 : Mr.K.Suyambulinga Bharathi
Government Advocate (Cr1.Side)

For R2 : Mr.R.Suriyanarayanan

ORDER

This Criminal Original Petition has been filed to quash the FIR No.340/2017 dated 21.08.2017 on the file of the 1st respondent.

2.Heard Mr.N.Ga.Nataraj, learned counsel appearing for the petitioner, Mr.K.Suyambulinga Bharathi, learned Government Advocate (Criminal Side) appearing for the first respondent and Mr.R.Suriyanarayanan, learned counsel for the second respondent.

3.A careful perusal of entire materials available on record, the investigation discloses a *prima facie* offence against the petitioners 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 **Cr1.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 **CrI.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. In view of the above discussion, this Court is not inclined to quash the FIR No.340/2017. However, considering the case is of the year 2017, the first respondent is directed to complete the investigation in FIR No.340/2017 within a period of eight weeks from the date of receipt of a copy of this Order.

6. With the above observations, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)



dss

To

1. The Sub Inspector of Police,
Ambasamudram Police Station,
Tirunelveli District.
2. The Public Prosecutor,
High Court, Madras.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1CC TO MR.N.GA.NATRAN, Advocate Sr. No. 89276

Cr1.O.P. (MD)No.318 of 2018

and

Cr1.M.P. (MD)No. 110 of 2018

23/09/2019

DB (CO)

TR(10.10.2019) 4P 5C