



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.09.2019

CORAM

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

CRL.O.P. (MD) .No.3305 of 2018

and

CRL.M.P. (MD) Nos.1541 and 1542 of 2018

WEB COPY

1.Vijaykumar

2.Jeiganesh ... Petitioners/Accused No.1 & 2

Vs.

State represented by
The Forest Ranger,
Madurai Range, Madurai.
(WLOR. No.2 of 2014)

..Respondent/Complainant

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the entire records pertaining to the proceedings in C.C.No.206 of 2016 on the file of the learned Judicial Magistrate No.V, Madurai and quash the same as illegal.

For Petitioner : Mr.V.Palanichamy

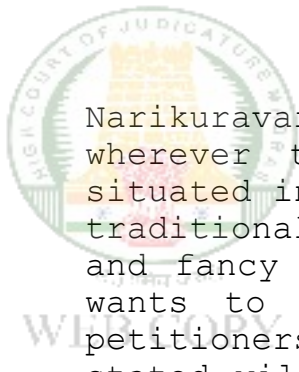
For R1 : Mr.K.Suyambulinga Bharathi,
Government Advocate (Criminal Side)

O R D E R

This Criminal Original Petition has been filed to quash the impugned charge sheet in C.C.No.206 of 2016 on the file of the learned Judicial Magistrate No.V, Madurai.

2. The case of the prosecution is that when the respondent on duty at Madurai Town Hall Road, the petitioners were selling their gypsy ornaments to the people, who came from northern side. On suspicious act, the respondent searched their bags and found that some animal parts of the wild life animals, which are six peacock legs and 54 thorn of porcupine and other medicinal leafs and roots. Therefore, the respondent have registered a case in WLOR.No.2 of 2014 as against the petitioners and remanded them.

3.The learned Counsel appearing for the petitioners would submit that the petitioners are innocent and they have not committed any offence as alleged by the prosecution. They are selling Manimalai, gypsy ornaments and other medicinal leafs and roots. The



Narikuravar people were assembled along with the family members, wherever the festival functions conducted in the famous temple situated in or out of the State. Further the people used to purchase traditional medicine through the Narikuravar community on good faith and fancy items are also sold on lesser amount. Hence, the people wants to purchase from the Narikuravar people. Therefore, the petitioners have purchased medicinal leafs, roots and the above stated wild animals parts of the body, from one of the traditional medical shop at Trichy and the same has to be sold to the persons. He also submitted that the petitioners are innocent and they were not aware about the Act.

4.The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the petitioners are having possession of some animals part of the wild life animals, which are six peacock legs and 54 thorn of porcupine and other medicinal leafs and roots without valid license. Therefore, the respondent registered a case in WLOR.No.2 of 2014, for the offence punishable under Sections 9, 39, 50, 51 and 51 A of Wild Life Protection Act, 1972 and the same was taken cognizance by the learned Judicial Magistrate No.V, Madurai, in C.C.No.206 of 2016. Therefore, he opposed this quash petition.

5.Heard Mr.V.Palanichamy, learned counsel appearing for the petitioners and Mr.K.Suyambulinga Bharathi, learned Government Advocate (Criminal Side) appearing for the respondent.

6.The petitioner are accused in WLOR.No.2 of 2014. The case was registered for the offences under Wild Life Protection Act, 1972. The case of the prosecution is that the petitioners are having possession of some animals part of the wild life animals, which are six peacock legs and 54 thorn of porcupine and other medicinal leafs and roots without valid license and they were sold it to the people. It is also seen from the statement recorded under Section 161(3) Cr.P.C., that there are evidences to attract the offence under Section 304 IPC. 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.

.....

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.

7.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.

8.At this juncture, the learned counsel for the petitioner submitted that personal appearance of the petitioner before the Court below in C.C.No.206 of 2016 on the file of the learned Judicial Magistrate No.V, Madurai, may be dispensed with.

9.Accepting the same, the personal appearance of the petitioners is dispensed with before the trial Court, except for furnishing copies, framing charges, questioning under Section 313 Cr.P.C and at the time of judgment.

10.In view of the above, this Court is not inclined to quash the Charge Sheet. Hence this Criminal Original Petition stands dismissed. Since the case is of the year 2016, the learned Judicial Magistrate No.V, Madurai, is directed to complete the trial within a period of three months from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

/ True Copy /

Sub Assistant Registrar (CS-)



To

1.The Judicial Magistrate No.V, Madurai.

2.The Forest Ranger,
Madurai Range, Madurai.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.V.PALANICHAMY, Advocate
(SR-86776[F] dated 16/09/2019)

CRL.O.P. (MD) .No.3305 of 2018
and
CRL.M.P. (MD) Nos.1541 and 1542 of 2018
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ES/01.10.2019/5P/5C