



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.09.2019

CORAM:

WEB COPY

THE HON'BLE **MR.JUSTICE G.K.ILANTHIRAIYAN**

Crl.O.P. (MD)No.3778 of 2018
and Crl.M.P. (MD)No.1843 of 2018

Muthiah @ Mani

... Petitioner

-vs-

1.The State represented by
the Inspector of Police,
Manor Police Station,
Tirunelveli District.
(In Crime No.344 of 2013)

2.Vidyachettiar

... Respondents

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.299 of 2013, on the file of the Judicial Magistrate No.V, Tirunelveli, Tirunelveli District and quash the same as illegal.

For Petitioner : Mr.G.Thalaimutharasu

For R-1 : Mr.K.Suyambulinga Bharathi,
Government Advocate(Crl.side)

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.299 of 2013, pending, on the file of the Judicial Magistrate No.V, Tirunelveli, Tirunelveli District.

2.It is alleged that the second respondent / *de facto* complainant initially gave some amount to the petitioner for purchasing a land belongs to one Vettum Perumal. But the first respondent did not pay the entire amount to the said land owner. Thereafter, the second respondent asked the petitioner to repay the amount. But the petitioner refused to do so. Hence the complaint.



3. Heard the learned counsel on either side and perused the materials on record.

4. In the considered view of this Court, the grounds raised by the petitioners are purely factual in nature. The said defence can be raised only before the Court below, in the course of trial and the Court below shall consider the same on its own merits and in accordance with law.

5. 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 Pokarnekhar 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."

6.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:-

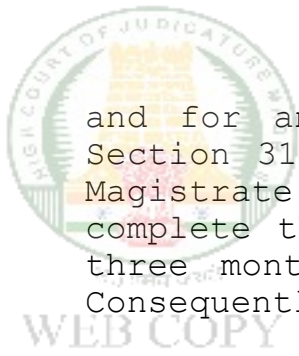
" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, 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.Today, when the matter was taken up for hearing, the learned Government Advocate (Criminal side) appearing for the first respondent, on instructions, would submit that the trial has been commenced in C.C.No.299 of 2013 and P.W.1 has already been examined by the prosecution. At this stage, this Court is not inclined to entertain this petition. Accordingly, this Criminal Original Petition is dismissed.

8.At this juncture, the learned Counsel for the petitioner submitted that the presence of the petitioner before the Trial Court may be dispensed with and also prayed for a direction to the Court below for speedy trial.

9.Accepting the said submission, the presence of the petitioner before the trial Court shall be dispensed with on condition that he shall be duly represented by a counsel on all hearing dates and shall be present for receiving charge sheet, for initial questioning



and for answering the charges, at the time of questioning under Section 313 of Cr.P.C. and passing judgment. The learned Judicial Magistrate No.V, Tirunelveli, Tirunelveli District, is directed to complete the proceedings in C.C.No.299 of 2013, 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 (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Judicial Magistrate No.V, Tirunelveli,
Tirunelveli District.
- 2.The Inspector of Police,
Manor Police Station,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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