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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2019

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

CRL.O.P. (MD) .No.4060 of 2018

and

CRL.M.P. (MD) No.2008 of 2018

Jegan : Petitioner/5th Accused
Vs.

- 1.The Inspector of Police,
Thuckalay Police Station,
Thuckalay, Kanyakumari District. :1st Respondent/Complainant
- 2.Sankar,
The Sub Inspector of Police,
Thuckalay Police Station,
Kanyakumari District. : 2nd Respondent/Defacto Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to proceedings in P.R.C.No.8 of 2014 on the file of the learned Judicial Magistrate, Padmanabhapuram and quash the same with respect to this petitioner.

For Petitioner : Mr.K.P.Narayanakumar
For R1 : Mr.K.Suyambulinga Bharathi,
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed to quash the proceeding in P.R.C.No.8 of 2014, on the file of the learned Judicial Magistrate, Padmanabhapuram.

2.The case of the prosecution is that on 01.06.2013, at about 03.00.am., the second respondent and his official was in patrol duty, at that time the accused persons were prepared to commit dacoity therefore the respondent police registered a case as against the accused persons.

3.The learned counsel for the petitioner would submit that the petitioner is an innocent and he has not committed any offence as alleged by the prosecution. Only based on the confession of co-accused, the respondent herein implicated the petitioner as an accused. Therefore, he prayed for quash this petition.

4.The learned Government Advocate (Criminal Side) would submit that that on 01.06.2013, at about 03.00.am., the second respondent and his official was in patrol duty, at that time the accused



persons were prepared to commit dacoity, therefore the respondent police registered a case as against the accused persons.

5. Heard Mr.K.P.Narayanakumar, learned counsel appearing for the petitioner and Mr.K.Suyambulinga Bharathi, learned Government Advocate (Criminal Side) appearing for the first respondent.

6. The petitioner is an accused in Crime No.452 of 2013. The case was registered for the offences punishable under Section 399 IPC. The case of the prosecution is that the petitioner along with other accused persons with intention to commit robbery they had some weapons. 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 399 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 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.

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<https://hcservices.ecourts.gov.in/hcservices/> 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."

7. 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. 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.

9. In view of the above discussion, this Court is not inclined to quash the Charge Sheet. Hence this Criminal Original Petition is dismissed. Since the case is of the year 2014, the learned Judicial Magistrate, Padmanabhapuram, is directed to complete the committal proceedings within a period of four weeks from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petitions are closed.

(*) "10. Further, 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" .

Sd/
Assistant Registrar(Crl Side)

**(*) AMENDED AS PER ORDER OF THIS
HON'BLE COURT DATED 24.10.2019**

/True copy/

Sub Assistant Registrar(CS-

das

To

TO BE SUBSTITUTED THE ORDER ALREADY DESPATCHED ON 18.10.2019

1. The Judicial Magistrate, Padmanabhapuram.

2. The Chief Judicial Magistrate, Nagercoil at Kanniyakumari.

3. The Inspector of Police,
Thuckalay Police Station,
Thuckalay, Kanyakumari District.

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

+1 CC to M/s.K.P.NARAYANA KUMAR, Advocate SR-94689

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CS(16.10.2019) 4P 5C
KK/SAR/08.11.2019/4P-6C