



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.10.2019

CORAM :

WEB COPY

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

Crl.O.P.(MD)No.4793 of 2018

and

Crl.M.P.(MD)Nos.2350 & 2351 of 2018

1.Solomon
2.Jayanthi Solomon ... Petitioners/Accused Nos.1 & 2

Vs.

1.State Represented by
The Sub-Inspector of Police,
Vadsery Police Station,
Vadsery, Kanyakumari District.
(Crime No.820 of 2013)
(S.T.C.No.269 of 2016) ... 1st Respondent/Complainant

3.Joseph Benatick @ Jose ... 2nd Respondent/Defacto
Complainant

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to call for the records relating to the case in S.T.C.No.269 of 2016 on the file of the learned Judicial Magistrate, No.II, Nagercoil and quash the same.

For Petitioners : Mr.K.Guhan

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

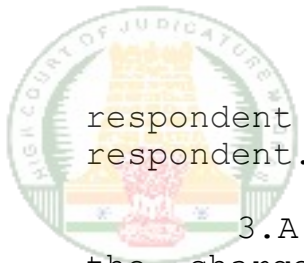
For R2 : Mr.Xavier Rajini

O R D E R

This petition has been filed to quash the proceedings in S.T.C.No.269 of 2016 on the file of the learned Judicial Magistrate, No.II, Nagercoil.

2.Heard the learned counsel appearing for the petitioner, the learned Government Advocate (criminal side) appearing for the first

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respondent and the learned counsel appearing for the second respondent.

3. A careful perusal of entire materials available on record, the charge sheet discloses a *prima facie* offence against the petitioners and there is no reason to interfere with the same. 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 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



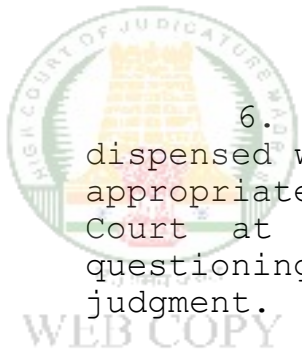
Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings 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."

4.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.

5.In view of the above discussion, this Court is not inclined to quash the charge sheet in S.T.C.No.269 of 2016. Hence, this Criminal Original Petition is dismissed. However, the learned Judicial Magistrate, No.II, Nagercoil, is directed to complete the entire trial proceedings in S.T.C.No.269 of 2016 within a period of six months from the date of receipt of copy of this Order. Consequently, connected miscellaneous petitions are closed.



6. 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 (CrI.Side)

// True Copy //

Sub Assistant Registrar(CS)

dss

To

- 1.The Judicial Magistrate, No.II,
Nagercoil.
- 2.The Sub-Inspector of Police,
Vadsery Police Station,
Vadsery, Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.XAVIER RAJINI, Advocate SR-93600.
+1 CC to M/s.K.GUHAN, Advocate SR-93647.

CrI.O.P. (MD)No.6124 of 2018
21.10.2019

CS (06.11.2019) 4P 6C