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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.09.2019

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P (MD) Nos.861 & 6587 of 2018

and

Crl.M.P. (MD) Nos.380 & 3145 of 2018

C.R.Saravanan

... Petitioner/ A-2 in both
the cases

Vs

1) The Inspector of Police,
Commercial Crime
Investigation Wing CID,
Thanjavur,
Thanjavur District.

... Respondent/ Complainant
in both the cases

2) A.K.Sivamalar,
Deputy Registrar,
Co-operative Society,
Thanjavur,
Thanjavur District.

... Respondent/ *De facto*
complainant in both cases

PRAYER in Crl.O.P.(MD) No.861 of 2018: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.210 of 2010 on the file of the learned Judicial Magistrate No.I, Thanjavur, Thanjavur District and quash the same as against this petition.

** Prayer amended as per order of this Court made in Crl.M.P. (MD) No.206 of 2018 in Crl.O.P. (MD) SR17740 of 2017 dated 10.01.2018*

PRAYER in Crl.O.P.(MD) No.6587 of 2018: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.206 of 2010 on the file of the learned Judicial Magistrate No.I, Thanjavur, Thanjavur District and quash the same as against this petition.

In both the cases:

For Petitioner : Mr.S.Makesh
Mr.G.M.Xavier

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

**C O M M O N O R D E R**

Since the issue involved in both the criminal original petitions are one and the same, they are disposed of by this common order.

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2. These petitions have been filed to quash the proceedings in C.C.Nos.206 & 210 of 2010 on the file of the learned Judicial Magistrate No.I, Thanjavur, Thanjavur District as against the petitioner.

3. The learned counsel appearing for the petitioner would submit that the petitioner is an innocent person and he has been falsely implicated in the case with oblique motive.

4. The learned Government Advocate (Criminal side) submitted that, the crime involved in both the cases is of the year 2007 and the first respondent has completed the investigation of the cases and also has filed a final report in the year 2010 itself and the same has been taken on file of the learned Judicial Magistrate No.I, Thanjavur, Thanjavur District.

5. Heard both sides and perused the materials available on records.

6. 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, 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.

6.....

7.....

8.....

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.

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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. In view of the above citations, the criminal proceedings against the petitioner cannot be quashed at its threshold and it has to be gone in to by full fledged trial. Further, in this case, trial has also been commenced. Therefore, the charges cannot be quashed at this stage and this criminal original petition is liable to be dismissed.

8. Accordingly, these criminal original petitions are dismissed with the liberty to the petitioner to raise all the grounds before the trial Court. Consequently, connected miscellaneous petitions are also closed. However, the learned Judicial Magistrate No.I, Thanjavur, Thanjavur District, is directed to complete the trial and dispose of the case, within a period of three **(03) months** from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CRL SIDE)

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Judicial Magistrate No.I,
Thanjavur, Thanjavur District.

2. The Inspector of Police,
Commercial Crime
Investigation Wing CID,
Thanjavur,
Thanjavur District.



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

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+4CC TO MR.G.M.XAVIER, Advocate Sr. No. 86197

Common Order made in
Crl.O.P (MD) Nos.861 & 6587 of 2018

Dated: **09.09.2019**

CS (CO)

TR(14.10.2019) 5P 8C