



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2019

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD)No.12319 of 2019

and

Crl.M.P(MD) Nos.7749 and 7752 of 2019

1. Justin Prakash
2. Babu

... Petitioners

Vs

1. The State through its
The Inspector of Police
Kodaikanal Police Station
Dindigul District
Crime No.458 of 2016

2. Arul Sivajothi

... Respondents

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to Call for the records in C.C.No.7 of 2019 on the file of the District Munsif cum Judicial Magistrate, Kodaikanal and quash the same against the petitioners.

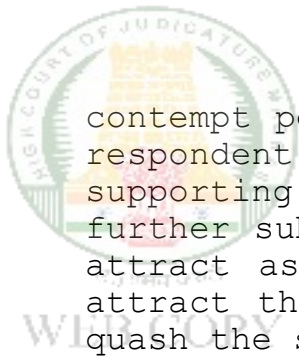
For Petitioner : Mr.T.A.Ebenezer

For Respondent No.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.7 of 2019 on the file of the District Munsif cum Judicial Magistrate, Kodaikanal for the offences under Sections 294(b), 353 and 342 of IPC.

2. The learned counsel for the petitioner would submit that the petitioner had already lodged a complaint against the defacto complainant. The allegation against the defacto complainant is that he demanded bribe for delivering passport. He further submitted that already he has filed quash petition in Crl.O.P(MD) No.1402 of 2019 to quash the First Information Report in which the first respondent submitted that they have already completed investigation and filed final report and recording the same the said petition was closed. He would further submit that the final report was filed with malafide intention as against the petitioner since the petitioner has filed



contempt petition in Cont.P(MD) No.174 of 2019 as against the first respondent in his personal capacity stating that he is supporting the persons who are trying to grab his properties. He further submit that the offences under Section 342 of IPC would not attract as against the petitioner and there are no ingredients to attract the offence under Section 342 of IPC. Hence he prayed to quash the same.

3. The learned Government Advocate(Crl.Side) would submit that after lodging of the complaint they examined witnesses and recorded statements under Section 161(3) Cr.P.C and the statements recorded by them corroborated with each other and the offences under Sections 294(b), 353 and 342 of IPC would attract as against the petitioner. He would also submit that they are about to take the trial in C.C.No. 7 of 2019 on the file of the District Munsif cum Judicial Magistrate, Kodaikanal. Therefore he sought for dismissal of the quash petition.

4. Heard Mr.T.A.Ebenezer, learned counsel appearing for the petitioner and Mr.K.Suyambulinga Bharathi, learned Government Advocate(Crl.Side) appearing for the first respondent.

5. There are totally two accused in Crime No.458 of 2016 in which the petitioner is arrayed as A1 and A2. The case was registered for the offences under Sections 294(b), 353 and 342 of IPC. While the defacto complainant came to the petitioner to surrender passport he asked for identify proof from the accused persons, in which there was a dispute between them, due to which the petitioner threatened the defacto complainant with dire consequences and abused him filthy language and thereafter they locked him in the office room and prevented him from doing his official duty.. It is also seen from the statement recorded under Section 161 Cr.P.C that there are evidences to attract the offence under Sections 294(b), 353 and 342 of 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 support 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.

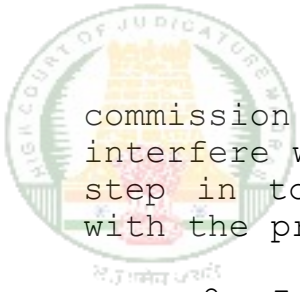
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9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint 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."

6. 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.

and there are specific allegations against all the accused persons.

7. It is also 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. In view of the above discussion, this Court is not inclined to quash the First Information Report. Hence this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The District Munsif cum Judicial Magistrate,
Kodaikanal.

2.The Inspector of Police
Kaliyakkavilai Police Station
Kanyakumari District

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

+1 CC to M/s.T.A.EBENEZER, Advocate (SR-85210[F] dated 05/09/2019)

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and

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