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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.13073 of 2019

and

Crl.M.P.(MD) No.8049 of 2019

B. Kala @ Kalavathi

... Petitioner/Sole Accused

Vs

1. The State rep. by
The Inspector of Police
City Crime Branch
Madurai District
Crime No. 17 of 2019

2. Azhia Nachiyar

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in Crime No.17 of 2019 on the file of the first respondent quash the same.

For Petitioner : Mr.S.Kumar
For Respondents : Mr.K.Suyambulinga bharathi,
G.A. (Crl. Side) for R1

O R D E R

This petition has been filed to quash the proceedings in Crime No.17 of 2019 on the file of the first respondent police as against the petitioner.

2.The learned Counsel appearing for the petitioner would submit that the petitioner is innocent and he has not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.17 of 2019 for the offences under Sections 465,466,467,468,471 of IPC as against the petitioner. He would further submit that the petitioner is the wife of late K. Boominathan. It is also seen that the disputer is between the petitioner and the second respondent in respect of claiming terminal benefits of late K. Boominathan. The petitioner also filed so many documents to show that the petitioner is the original wife of late K. Boominathan. Hence he prayed to quash the same.

3.The learned Government Advocate (criminal side) would submit that the investigation is still pending and this petition is in premature stage and hence, he prayed for dismissal of this petition.



4. Heard both sides and perused the materials available on record.

5. It is seen from the First Information Report that there are 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.

6. 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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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."

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. However, considering the above facts and circumstances of the case the petitioner is directed to appear before the first respondent and submit all documents showing that the petitioner is the original wife of late K.Boominathan and on receipt of the same, the first respondent is directed to conduct enquiry and pass final orders within a period of twelve weeks from the date of receipt of a copy of this order

8. With the above observation and direction, the Criminal Original Petition stands disposed of. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Inspector of Police
City Crime Branch
Madurai District

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

+1 CC to Mr.S.KUMAR, Advocate (SR-88126[F] dated 20/09/2019)

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and

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MK (11.10.2019) 4P 4C