



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.10.2019

CORAM

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

CRL.O.P(MD)No.5817 of 2018

and

Cr1.M.P. (MD)Nos.2798 and 2799 of 2018

1.Mohammed Ersha@ Ershad

2.Vajitha Begum

...Petitioners/Accused Nos.1 & 2

Vs.

1.The Inspector of Police,

Karaikudi North Police Station,

Sivagangai District.

(In Crime No.614 of 2015) ...1st Respondent/Complainant

2.Mohammed Ali

...2nd Respondent/De facto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in C.C.No.398 of 2015 on the file of the learned Principal District Munsif Cum Judicial Magistrate, Karaikudi and quash the same as illegal as against the petitioner is concerned.

For Petitioners : Mr.J.Jeyakumaran

For R1 : Mr.K.Suyambulinga Bharathi,
Government Advocate (Cr1.Side)

For R2 : Mr.A.Shajakhan

O R D E R

This petition has been filed to quash the proceedings in C.C.No.398 of 2015 on the file of the learned Principal District Munsif Cum Judicial Magistrate, Karaikudi as against the petitioners.

2. Heard both sides.

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 also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Cr1.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 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.

.....

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."

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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. Hence, the Criminal Original Petition is dismissed. However, considering the fact that the trial is pending from the year 2015, the learned Principal District Munsif Cum Judicial Magistrate, Karaikudi, is directed to proceed with the trial and complete the same within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS)

vsd



To

- 1.The Principal District Munsif Cum Judicial Magistrate,
Karaikudi.
- 2.The Inspector of Police,
Karaikudi North Police Station,
Sivagangai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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