WEB COPY

BEFORE THE MADURAI BENGH OF MADRAS HIGH COURT
DATED: 01.10.2019
CORAM
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN
CRL.O.P (MD) No.6612 of 2018
and
Crl.M.P.(MD) No.3153 of 2018

L.Selvaraj ... Petitioners/A2

Vs

1.The State rep. by
The Inspector of Police,
Town North Police Station,
Dindigul town,
Dindigul District.
Crime No.190 of 2017 ... 1st Respondent/Complainant

2.Mrs.Uma Lakshmi ... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in connection with the impugned charge sheet in C.C.No.29 of 2018 pending on the file of the Judicial Magistrate Court No.2, Dindigul, Dindigul District and quash the same insofar as the petitioners are concerned.

For Petitioner : Mr.D.Selvaraj
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 C.C.No.29 of 2018 pending on the file of the Judicial Magistrate Court No.2, Dindigul as against the petitioner.

2.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. The respondent has not properly investigated the crime. He further submit that the allegations are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. The petitioner was implicated as accused only based on the statement recorded under Section 161(3) of Cr.P.C. from A1, which is highly erroneous. Hence, he prayed for the quashing of the criminal proceedings.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

3.The learned Government Advocate (criminal side) submitted that there are materials available to proceed with the case as against the petitioner herein and at the threshold, the criminal proceedings cannot be quashed and the charges framed against the petitioner have to be gone into a full-fledged trial and hence, he prayed for dismissal of the petition.

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

5.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.*
>
> *6.....*
>
> *7.....*

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

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.

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.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

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

8.Accordingly, this criminal original petition is dismissed with the liberty to the petitioner to raise all the grounds before the trial Court. Consequently, connected miscellaneous petition is also dismissed. However, the learned Judicial Magistrate No.2, Dindigul, is directed to complete the trial and dispose of the case, within a period of six months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Inspector of Police,
   Town North Police Station,
   Dindigul town,
   Dindigul District.

2. The Judicial Magistrate No.2,
   Dindigul

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

+1 CC to Mr.R. MURUGAN, Advocate (SR-91021[F] dated 03/10/2019)
+1 CC to Mr.S.SARAVAGAN PRABHU, Advocate (SR-91109[F] dated 03/10/2019)

Order made in
CRL.O.P (MD) No.6612 of 2018
01.10.2019

ARUL
MK (21.10.2019) 4P 6C

https://hcservices.ecourts.gov.in/hcservices/