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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.10.2019

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) Nos. 6956 & 6402 of 2018

and Crl.M.P. (MD) No.3308 of 2018

in Crl.O.P. (MD) No.6956 of 2018

and Crl.M.P. (MD) No.3031 of 2018

in Crl.O.P (MD) No.6402 of 2018

P.Appu ... Petitioner/1st accused in Crl. OP(MD) No.
6956 of 2018

P. Sangu Muthaiah ... Petitioner/2nd accused in Crl. OP(MD) No.
6402 of 2018

Vs

1. The State,
Rep. by the Inspector of Police,
M. Kallupatti Police Station,
Madurai District.
(Crime No. 50 of 2017)

... Respondent/Complainant in both Crl.Ops

2. T. Seenivasan ... Respondent in both Crl.O.Ps.

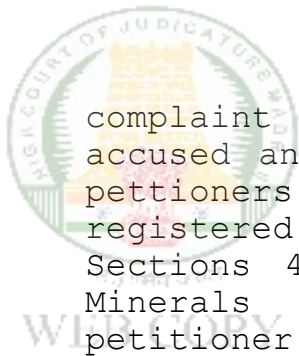
COMMON PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the First Information Report in Cr No. 50/2017 on the file of the Respondent police and quash the same as illegal as against the petitioner.

For Petitioner : Mr..G.THALAIMUTHARASU
For Respondent : MR.K.SUYAMBULINGA BHARATHI,
G.A. (Crl. Side) for R1
: MR.A.ARUNPRASAD FOR R2

COMMON ORDER

These Petitions have been filed to quash the First Information Report in Crime No. 50/2017 for the offences under sections 447, 427, 379 (NP) IPC and Section 21(5) of Mines and Minerals (Development & Regulation) Act, 1957, on the file of the Respondent police as against the petitioners.

2. The learned Counsel appearing for the petitioners would submit that the entire allegation in the prosecution case are false. He would further submit that the second respondent only with a view to harass the petitioner lodged a false complaint and the first respondent also without conducting enquiry and veracity fo the



complaint registered a case and implicated the petitioners as accused and hence, none of the offences would attract against the petitioners. Without any base, the first respondent police registered a case in Crime No. 50 of 2017 for the offences under Sections 447, 427, 379 (NP) IPC and Section 21(5) of Mines and Minerals (Development & Regulation) Act, 1957, as against the petitioner. Hence they 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, they 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 petitioners, 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 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.

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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."

7. In view of the above, this Court is not inclined to quash the FIR. Accordingly, these criminal original petitions are dismissed. Consequently, connected miscellaneous petitions are dismissed. The first respondent is also directed to complete the investigation and file a final report within a period of **Twelve (12)**



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and Crl.M.P.(MD) No.3308 of 2018

weeks from the date of receipt of copy of this Order, before the jurisdictional Magistrate.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Inspector of Police,
M. Kallupatti Police Station,
Madurai District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.G.THALAIMUTHARASU, Advocate (SR-95257[F] dated
31/10/2019)

Common Order made in
CRL.O.P (MD) No.6956
& 6402 of 2018
30.10.2019

_MK (21.11.2019) 4P 4C