



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.10.2019

CORAM:

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

Crl.O.P. (MD)No.7231 of 2018

and

Crl.MP. (MD)No.3443 of 2018

WEB COPY

1.Abdullah
2.Yusuf Auto @ Mohammed Yousuf
3.Kasim @ Mohaideen Abdul Kader
4.Electrician Jaffer @ Jaffer Sidiq
5.Hyder Ali ... Petitioners/Accused Nos. 1 to 5

Vs

1. State represented by the
The Inspector of Police,
Melapalayam Police Station,
Tirunelveli.
(Crime No.67 of 2018)

.... 1st Respondent/Defacto
Complainant

2.Kutha Mohamed

... 2nd Respondent/Defacto
Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to Call for entire records pertaining to the Crime No.67 of 2018, dated 15.03.2018 on the file of the first respondent and quash the same against these petitioners.

For Petitioners	:	Mr.A.S.Alaudeen
For Respondent	:	Mr.K.Suyambulinga Bharathi
No.1		Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed to quash the proceedings in Crime No. 68 of 2019 on the file of the first respondent police.

2. The learned Counsel appearing for the petitioners would submit that the petitioners are innocent persons and they have not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No. 68 of 2019 for the offences under Sections 147, 294 (b), 352 and 506 (ii) of IPC as against the petitioners.

3. The learned Government Advocate (Crl.Side) would submit that the investigation is almost completed and the respondent police have only to file final report.

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



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. 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.

.....

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. 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 petition is closed.

7. However, the learned counsel for the petitioners would submit that it is a case in counter and the complaint lodged by the petitioners has been registered in Crime No.66 of 2018 and it is also pending. Considering the same, the first respondent is directed to complete the investigation in Crime Nos.66 and 67 of 2018 and follow the procedure laid down under Police Standing Order 588 (A) and file the final reports within a period of three months from the date of receipt of a copy of this order, if it is not already filed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Inspector of Police,
Melapalayam Police Station,
Tirunelveli.

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

dss

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