



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 27.09.2019
CORAM:

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

WEB COPY

Crl.O.P. (MD) No.13678 of 2019
and
Crl.M.P (MD) Nos. 8333 and 8335 of 2019

A.Bashera Begam ... Petitioner/Accused No.2

Vs.

1. The State rep by
The Inspector of Police,
All Women Police Station
Theni District, Theni
(Crime No.23/2018) ... 1st Respondent/Complainant

2. Rashita Banu ... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to Call for the records in respect of C.C.No. 81 of 2019 dated 12.12.2018 on the file of the learned Judicial Magistrate, Theni insofar as petitioner is concerned and quash the same.

For Petitioner : Mr.M.Balakrishnan

For Respondents : Mr.K.Suyambulinga Bharathi
No.1 Government Advocate (Crl.Side)

O R D E R

This petition has been filed to quash the proceedings in C.C.No. 81 of 2019 dated 12.12.2018 on the file of the learned Judicial Magistrate, Theni Tirunelveli, as against this petitioner alone.

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. 23 of 2018 for the offences under Sections 498(A), 406, 294(b), 109, 506(i) of IPC and Section 4 of TNPHW Act, as against the petitioner and taken cognizance for in C.C.No. 81 of 2019. Hence he prayed to quash the same.

3. The learned Government Advocate (Crl.Side) would submit that some of the witnesses have been examined in this case.



4. Heard Mr.M.Balakrishnan, 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 is a 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 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.



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.

6. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No. 81 of 2019 on the file of the learned Judicial Magistrate, Theni. Hence this Criminal Original Petition stands dismissed. Consequently, Crl.M.P(MD) No.8335 of 2019 stands allowed and Crl.M.P(MD) No.8333 is closed. However, the



trial Court directed to complete the trial within a period of six months from the date of receipt of copy of this Order.

7. Further, the personal appearance of the petitioner is dispensed with and he shall be represented by a counsel after filing appropriate application. The petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment.

Sd/-

Assistant Registrar(AD-I)

// True Copy //

Sub Assistant Registrar(CS)

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To

- 1.The Judicial Magistrate, Theni
2. The The Inspector of Police,
All Women Police Station
Theni District, Theni
3. The Additional Public Prosecutor
Madurai Bench of Madras High Court

+1CC TO MR.M.BALAKRISHNAN, Advocate Sr. No. 90147

Cr1.O.P.(MD) No.13678 of 2019
and
Cr1.M.P(MD) Nos. 8333 and 8335 of 2019
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SMV(CO)
TR(16.10.2019) 4P 5C