



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.11.2019

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No.9613 of 2018

and

Crl.M.P. (MD) Nos.4267 and 4268 of 2018

P.Mangaiyarkarasi

... Petitioner

Vs

1.The Inspector of Police,
District Crime Branch,
Tirunelveli District.

2.M.Terence Fernando

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records relating to C.C.No.14 of 2013 on the file of the Special Court Land Grabbing Cases, Tirunelveli in crime No.25 of 2005 for the offences under Sections 120(B), 420, 465, 468, 471 and 420 I.P.C. and quash the same as against this petitioner.

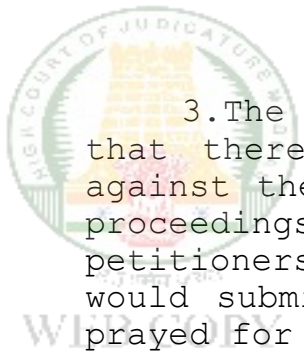
For Petitioner : Mr.F.Deepak

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.14 of 2013 on the file of the Special Court Land Grabbing Cases, Tirunelveli, having been taken cognizance for the offences under Sections 120(B), 420, 465, 468, 471 and 420 I.P.C. as against this petitioner.

2.The learned counsel appearing for the petitioners would submit that the petitioner is an innocent person and she has been falsely implicated in this case with oblique motive. The 1st respondent has considered the fact that there is civil dispute between the petitioner and the defacto complainant and no averments are made out as against the petitioner. The respondent police conducted the investigation in a mechanical manner and filed the charge sheet as against the petitioner and hence, sought for quashment of the proceedings.



3.The learned Government Advocate (criminal side) submitted that there are materials available to proceed with the case as against the petitioners herein and at the threshold, the criminal proceedings cannot be quashed and the charges framed against the petitioners have to be gone into a full-fledged trial. Further, he would submit that the trial has also been commenced 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.

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



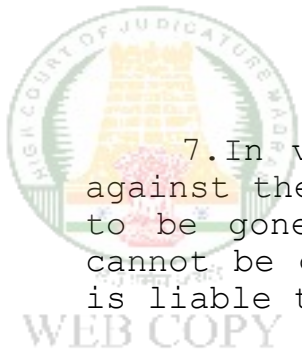
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9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint 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.



7. In view of the above citations, the criminal proceedings against the petitioners 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 petitioners to raise all the grounds before the trial Court. Consequently, connected miscellaneous petitions are also dismissed.

9. It is represented by both sides that the trial is pending before the Special Court for Land Grabbing Cases, Tirunelveli and since the constitution of Special Court is under challenge before the Hon'ble Supreme Court of India. Therefore, considering the said fact and along with the fact that the case is of the year 2013, the case in C.C.No.14 of 2013 is hereby withdrawn from the file of the Special Court and transferred the same to the file of the learned Judicial Magistrate No.1, Tirunelveli. The Presiding Officer of the Special Court is directed to send the entire records in C.C.No.14 of 2013 gto the file of the learned Judicial Magistrate No.1, Tirunelveli forthwith and on receipt of the same, the learned Judicial Magistrate No.1, Tirunelveli is directed to complete the trial and dispose of the case, within a period of six months thereafter. The personal appearance of the petitioner before the trial Court is dispensed with, except the dates on which, the trial Judge insisted the petitioner for her appearance.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Presiding Officer, Land Grabbing Cases, Tirunelveli.
2. The Judicial Magistrate No.1, Tirunelveli.
3. The The Inspector of Police,
District Crime Branch,
Tirunelveli District.



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

Order made in
CRL.O.P (MD) No.9613 of 2018
05.11.2019

TR(18.11.2019) 5P 5C