



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)No.11323 of 2018

and

CRL.M.P (MD) .No.5167 of 2018

WEB COPY

S.Mahoharan @ SVR Manoharan

... Petitioner

Vs.

1.The Deputy Commissioner of Police,
Law and Order, Trichy.

2.The Sub Inspector of Police,
Woraiyur Police Station,
Trichy.

(In Crime No.897 of 2017)

...Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in Crime No.897 of 2017, dated 21.06.2017, on the file of the second respondent and quash the same as against this petitioner.

For Petitioner

: No Appearance

For Respondents

: Mr.K.Suyambulinga Bharathi

Government Advocate (Criminal Side)

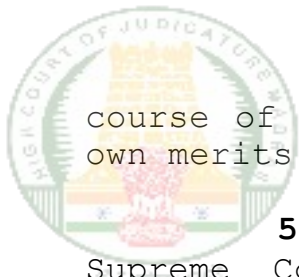
O R D E R

This petition has been filed to quash the First Information Report in Crime No.897 of 2017, dated 21.06.2017, on the file of the second respondent.

2. It is alleged that due to money dispute between the petitioner and the *de facto* complainant, the *de facto* complainant preferred a complaint before the second respondent Police. The second respondent registered a complaint in Crime No.897 of 2017 as against the petitioner herein.

3. Today, when the matter is taken up for hearing, the learned Government Advocate (Criminal Side) appearing for the respondents would submit that the investigation in this case is in progress and the respondent Police is awaiting for a report from the Forensic Department. He further submitted that once the report is received, the respondent Police will file a final report.

4. In the considered view of this Court, the grounds raised by the petitioner in the affidavit are purely factual in nature. The said defence can be raised only before the Court below, in the



course of trial and the Court below shall consider the same on its own merits and in accordance with law.

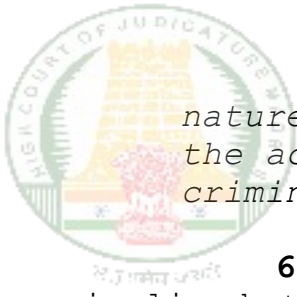
5. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.255 of 2019** dated **12.02.2019** in the case of **Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors.**, as follows:-

"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.

.....

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 decision, this Court is not inclined to entertain this petition. Accordingly, this Criminal Original Petition is dismissed. However, the second respondent Police is directed to complete the investigation in Crime No.897 of 2017 and file a final report before the concerned Jurisdictional Magistrate within a period of eight weeks from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

Sub Assistant Registrar(CS)

Tsg

To

- 1.The Deputy Commissioner of Police,
Law and Order, Trichy.
- 2.The Sub Inspector of Police,
Woraiyur Police Station,
Trichy.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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