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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2019

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No. 19353 of 2018

and

Cr1.M.P.(MD) Nos. 8746 & 8747 of 2019

Dinesh Kumar

... Petitioner/Respondent No.1

Vs

Niranjana Devi

... Respondent/Petitioner

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in DVOP No. 3 of 2018, on the file of the learned Judicial Magistrate, Andipatti and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.C. Sadiq Raja
For Respondent : Mr.B. Arun

O R D E R

This petition has been filed to quash the proceedings in DVOP No. 3 of 2018, on the file of the learned Judicial Magistrate, Andipatti, for an alleged offence under Sections 18, 20, 23 of the Protection of Women from Domestic Violence Act, 2005.

2. This Court already quash the proceedings by an order, dated 22.10.2019 in Cr1.O.P.(MD) No.12225 of 2019 as against the other respondents in DVOP No.3 of 2019 on the file of the learned Judicial Magistrate, Andipatti. Now, the petitioner/husband of the respondent filed this petition.

3. Heard both sides and perused the materials available on records.

4. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Cr1.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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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."



5. 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:-

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" 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 citations, the DVOP proceedings as against the petitioner cannot be quashed. Further, by order of this Court, dated 22.10.2019, while allowing the petition, the learned trial Court was directed to complete the DVOP proceedings, within a period of six months.

7. Accordingly, this criminal original petition is dismissed with the liberty to the petitioner to raise all the grounds before the trial Court. Consequently, connected miscellaneous petitions are also dismissed. However, the learned Judicial Magistrate, Andipatti, is directed to complete the trial and dispose of the case, within a period of **Six (6) months** from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar (CS)

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To

1. The Judicial Magistrate, Andipatti.

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

+1 CC to MR.B.ARUN, Advocate (SR-97354[F] dated 11/11/2019)

+1 CC to MR.D.SADIQ RAJA, Advocate (SR-97295[F] dated 11/11/2019)

Order made in
CRL.O.P (MD) No.19353 of 2018
11.11.2019

_MK (29.11.2019) 4P 5C