



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.11.2019**

CORAM:

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

Crl.O.P. (MD)No.21828 of 2018

and

Crl.M.P. (MD)No.10141 of 2018

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1.R.Shanmuga Sundram

2.S.Kandasamy

...Petitioners/Accused Nos.1 & 2

Vs.

1.The State Rep. by

The Inspector of Police,

Pasupathipalayam Police Station,

Karur District.

(Crime No.564 of 2018)

...1st Respondent/De jure Complainant

2.Banumathi

...2nd Respondent/Defacto Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the entire records connected with the case in Crime No.564 of 2018 registered on the file of the respondent No.1 and quash the same as illegal.

For Petitioners : Mr.S.Malaikani

For R1 : Mr.R.Anandharaj

Additional Public Prosecutor

O R D E R

This petition has been filed to quash the proceedings in Crime No.564 of 2018 registered on the file of the first respondent as against the petitioners.

2.The learned Counsel appearing for the petitioner 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.564 of 2018 for the offences under Sections 21(4) of Mines and Minerals (Development and Regulation) Act and Section 379 of IPC, as against the petitioners. Hence, he prayed to quash the same.

3.The learned Additional Public Prosecutor would submit that the investigation is still pending and this petition is in premature stage and hence, he prayed for dismissal of this petition. He would also submit that as per the G.O.(Ms.)No.12, Industries MMC1), 2nd February 2009, whereas the present complaint lodged by the Sub Inspector of Police, namely, the second respondent herein, the first respondent straight away registered the case in Crime No.564 of 2018 as against the petitioners. The relevant portion of the G.O. reads



hereunder:

"Delegation of Powers to certain officers of certain Departments under Mines and Minerals (Development and Regulation) Act.

[G.O. (Ms.) No.12, Industries MMC1), 2nd February 2009, Thai 20, Thiruvalluvar Aandu - 2040]

No.II(2)/IND/170/2009- Under Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act 67 of 1957) and in supercession of Industries Department Notification No.319, published at page 1 in Part II - Section 2 of the Tamil Nadu Government Gazette Extraordinary, dated June 22, 1994 the Governor of Tamil Nadu hereby authorizes the District Forest Officers and the Police Personnel not below the rank of Inspector of Police, to make complaint in writing to the Court of competent jurisdiction for any offence punishable under the said Act or any Rules made thereunder, in respect of cases failing within their jurisdiction.

M.F.FAROOQUI,

Principal Secretary to Government."

4.It is seen from the First Information Report that there are specific allegation as against the petitioners, 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 grab and unearth the crime in accordance with the procedures prescribed in the Code.

5.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.

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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.

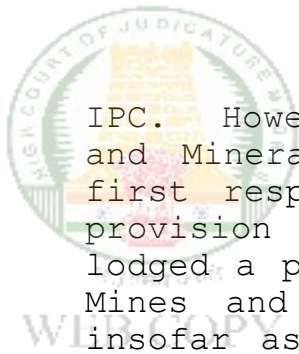
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9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint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

6. In view of the above, this Court is not inclined to quash the FIR in Crime No.564 of 2018 for the offence under Section 379 of <https://hcservices.ecourts.gov.in/hcservices/>



IPC. However, as far as the offence under Section 21(4) of Mines and Minerals (Development and Regulation) Act is concerned, the first respondent cannot file a final report. According to the provision under the said Act, the first respondent ought to have lodged a private complaint as contemplated under Section 22 of the Mines and Minerals (Development and Regulation) Act. Therefore, insofar as the offence under Section 21(4) of Mines and Minerals (Development and Regulation) Act is concerned, this petition is allowed and the FIR is quashed. The first respondent is at liberty to proceed under Section 22 of the Mines and Minerals (Development and Regulation) Act as against the petitioner and directed to complete the investigation and file a final report with regard to the offence under Section 379 of IPC within a period of four weeks from the date of receipt of a copy of this order, before the jurisdiction Magistrate.

7. Accordingly, this Criminal Original Petition is partly allowed. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2020

Sub Assistant Registrar (CS)

vsd

To

1. The Inspector of Police,
Pasupathipalayam Police Station,
Karur District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CrI.O.P. (MD) No. 21828 of 2018
and

CrI.M.P. (MD) No. 10141 of 2018
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SMA/28/01/2020/4P/3C