WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 21.10.2019
CORAM
THE HONOURABLE **MR. JUSTICE G.K.ILANTHIRAIYAN**
Crl.O.P (MD) No.14859 of 2019
and
Crl.M.P.(MD) Nos.8941 and 8942 of 2019

U M. Maha Abirami @ M.Chitra Abirami ... Petitioner/
Accused No.2

Vs

1. The Inspector of Police
Sivaganga Town Police Station
Sivagangai. : 1st Respondent/Complainant

2.Antony : 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in C.C.No.185 of 2009 pending on the file of the Judicial Magistrate No.I, Sivagangai and quash the complaint as against the petitioner.

For Petitioner : Mr.B.Natarajan

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.185 of 2009 pending on the file of the Judicial Magistrate No.I, Sivagangai, as against the petitioner.

2. The learned Counsel appearing for the petitioner would submit that the petition is an innocent person and she has not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.946 of 2008 for the offences under Sections 420,427,448 and506(ii) of IPC, as against the petitioner and taken cognizance for in C.C. No.185of 2009. 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.B.Natarajan learned counsel appearing for the petitioner and Mr.K.Suyambulinga Bharathi, learned Government Advocate(Crl.Side) appearing for the first respondent.

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

WEB COPY

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 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*

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

WEB COPY

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. It is also seen that bailable warrant was issued as against the petitioner and only during last month she recalled the bailable warrant and on the other hand she filed petition to quash the proceedings. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.185 of 2009 pending on

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

WEB COPY

the file of the Judicial Magistrate No.I, Sivagangai. Hence this Criminal Original Petition stands dismissed. Consequently connected miscellaneous petition in Crl.M.P(MD) No.8941 of 2019 stands dismissed and petition in Crl.O.P(MD) No.8942 of 2019 stands ordered. However, the trial Court is directed to complete the trial within a period of three months from the date of receipt of copy of this Order.

7. Further, the personal appearance of the petitioner is dispensed with and she 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 (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

aav

To

1. The Judicial Magistrate No.I, Sivagangai

2. The Inspector of Police
   Sivaganga Town Police Station
   Sivagangai

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

Crl.O.P (MD) No.14859 of 2019
and
Crl.M.P.(MD) Nos.8941 and 8942 of 2019
21.10.2019

CS(07.11.2019) 4P 4C

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