



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.10.2019

CORAM

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

Crl.O.P (MD) Nos.19351 & 22722 of 2018

and

Crl.M.P.(MD) Nos.8743 and 10689 of 2018

WEB COPY

Crl.O.P. (MD) .No.19351 of 2018

Rajesh Sathya

... Petitioner / Accused No.3

Vs

1. State represented by its
The Inspector of Police,
All Women Police Station,
Colachel, Kanyakumari District. ... 1st Respondent / Complainant

2. Kumutha,
District Child Protection Officer,
District Child Protection Unit,
Collectorate, Kanyakumari District. ... 2nd Respondent / De
facto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records relating to the impugned First Information Report in Crime No.08 of 2018, on the file of the respondent Police and quash the same as against this petitioner.

For Petitioner : Mr.S.Duraisamy

Senior Counsel

for Mr.F.Deepak

For R-1 : Mr.K.Suyambulinga Bharathi,

Government Advocate (Criminal Side)

For R-2 : No Appearance

Crl.O.P. (MD) .No.22722 of 2018

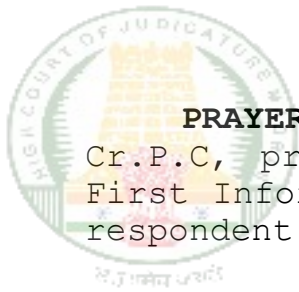
Jeba Priya

... Petitioner / Accused No.2

Vs

1. State represented by its
The Inspector of Police,
All Women Police Station,
Colachel, Kanyakumari District. ... 1st Respondent / Complainant

2. Kumutha,
District Child Protection Officer,
District Child Protection Unit,
Collectorate, Kanyakumari District. ... 2nd Respondent / De
facto Complainant



PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records relating to the impugned First Information Report in Crime No.08 of 2018, on the file of the respondent Police and quash the same as against this petitioner.

For Petitioner : Mr.S.Duraisamy
Senior Counsel
for Mr.F.Deepak

For R-1 : Mr.K.Suyambulinga Bharathi,
Government Advocate (Criminal Side)

For R-2 : No Appearance

COMMON ORDER

These Criminal Original Petitions have been filed to quash the criminal proceedings in Crime No.08 of 2018, on the file of the first respondent Police.

2. The petitioner / third accused in Crl.O.P.(MD).No.19351 of 2018, is professionally a Doctor and he is the Honorary Manager of the Mentally Retarded Children's Home at Neyyoor, Alancode, Kanyakumari District. The petitioner / Accused No.2 in Crl.O.P.(MD).No.22722 of 2018 is a Warden in the said Home.

3. The learned Counsel appearing for the petitioners in both the petitions 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.08 of 2018, for the offences punishable under Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and section 326 of the Indian Penal Code, 1860, on the file of the first respondent Police. He would further submit that there is absolutely no reason to initiate criminal proceedings as against the petitioners herein. Hence, the petitioners pray to quash the same.

4. Heard Mr.S.Duraisamy, learned Senior counsel, appearing for the petitioners as well as Mr.K.Suyambulinga Bharathi, learned Government Advocate (Criminal side), appearing for the first respondent and there is no representation on behalf of the second respondent.

5. It is seen from the records that the petitioner in Crl.O.P.(MD).No.19351 of 2018, is arrayed as third accused in the First Information Report and the petitioner in Crl.O.P.(MD).No.22722 of 2018 is arrayed as second accused in the First Information Report. It is also seen that the allegations as against the petitioners herein are that a mentally retarded child aged about seventeen years was branded by a Cook of the Home.



6. Insofar as the petitioner / third accused in Crl.O.P. (MD).No.19351 of 2018 had not caused injury to the victim, the offence under Section 326 of the Indian Penal Code would not at all attract as against the third accused in Crime No.08 of 2018. As far as the offence under Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 is concerned, it can be invoked only if the person having the actual charge of or control over a child, assaults, abandons, abuses, exposes or willfully neglects the child. In this case, there is absolutely nothing on record to indicate that the third accused was wilful in his conduct. Therefore, the entire allegations are not attributed against the petitioner / third accused in Crl.O.P.(MD).No.19351 of 2018. The entire allegations and averments are attributed only against other accused persons in Crime No.8 of 2018. Therefore, no useful purpose will be served in keeping the First Information Report pending as against the petitioner in Crl.O.P.(MD).No.19351 of 2018.

7. Insofar as the petitioner / second accused in Crl.O.P. (MD).No.22722 of 2018, it is seen from the First Information Report that there is a specific allegation as against this petitioner, which has to be investigated. Further the F.I.R is not an encyclopedia and it need not contain all facts. Further, it cannot be quashed in the threshold. This Court finds that the F.I.R discloses *prima facie* commission of cognizable offence and as such, this Court cannot interfere with the investigation. The investigating machinery has to step into 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 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."

8. In view of the above discussions, this Court is inclined to quash the proceedings in Crime No.08 of 2018, on the file of the first respondent Police against the petitioner / third accused in Crl.O.P.(MD).No.19351 of 2018 and Crl.O.P.(MD).No.19351 of 2018 stands allowed.

9. Insofar as the petitioner / second accused is concerned, this Court is not inclined to quash the proceedings in Crime No.08 of 2018, on the file of the first respondent Police against the petitioner / second accused in Crl.O.P.(MD).No.22722 of 2018 and



Crl.O.P.(MD).No.22722 of 2018 stands dismissed.

10. However, the respondent Police is directed to complete the investigation in Crime No.8 of 2018 on the file of the first respondent police and file the final report before the concerned Court, within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Inspector of Police,
All Women Police Station,
Colachel, Kanyakumari District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P (MD) Nos.19351 & 22722 of 2018
and
Crl.M.P.(MD) Nos.8743 & 10689 of 2018

22.10.2019

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