



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:28.11.2019

CORAM:

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

Crl.O.P. (MD)No.22914 of 2018

and

Crl.M.P. (MD)No.10791 of 2018

Mujipur Rahuman

...Petitioner/Sole Accused

Vs.

1.State Rep. by

The Inspector of Police,
Pattukkottai Police Station,
Thanjavur District.

(In Crime No.314 of 2018) ... 1st Respondent/Complainant

2.Malarmani

...2nd Respondent/Defacto Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to the complaint in Crime No.314 of 2018 on the file of the first respondent police and quash the same.

For Petitioner : Mr.G.Karuppasamy Pandian

For R1 : Mr.K.Suyambulinga Bharathi

Government Advocate (Crl.side)

O R D E R

This petition has been filed to quash the proceedings in Crime No.314 of 2018 on the file of the first respondent police as against the petitioner.

2.The learned Counsel appearing for the petitioner would submit that NBW was issued in the proceedings initiated by the complainant under Section 138 of Negotiable Instruments Act in S.T.C.No.139 of 2017. Subsequently, the matter has been settled between the petitioner and the *de facto* complainant in S.T.C.No.139 of 2017. For non-appearance of the petitioner herein/accused in the proceedings of S.T.C.139 of 2017, Non Bailable Warrant was issued and subsequently, the present FIR has been registered on the complaint lodged by the second respondent herein.

3.The learned Government Advocate (Crl.side) would submit that the investigation is still pending and this petition is in premature



stage and hence, he prayed for dismissal of this petition.

4. Heard both sides and perused the materials available on record.

5. It is seen from the First Information Report that there are 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 step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

6. 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 Pokarnekhar 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.

6.....

7.....

8.....

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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."

7. In view of the above, this Court is not inclined to quash the FIR. However, the petitioner is directed to appear before the first respondent and submit all the relevant documents in respect of the settlement between the petitioner and the *de facto* complainant in S.T.C.No.139 of 2017. On receipt of the same, the first respondent is directed to consider the same and to complete the enquiry in Crime No.314 of 2018.

8. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(AS)

// True Copy //

Sub Assistant Registrar(CS)

vsd



To

- 1.The Inspector of Police,
Pattukkottai Police Station,
Thanjavur District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD) No.22914 of 2018
and
Crl.M.P. (MD) No.10791 of 2018

mr (CO)
TR(19.12.2019) 4P 3C

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