



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.11.2019

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No. 16162 of 2019

and CrI.M.P. (MD) No. 9621 of 2019

WEB COPY

1. Pushpavathi

2. Narasimman

... Petitioners/A1 & A2

Vs

1.State through the Inspector of Police,
District Crime Branch,
Thoothukudi District.
(Crime No. 27 of 2019)

... 1st Respondent/Complainant

2. Gomathi

... 2nd Respondent/Defacto
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records and quash the proceeding of the FIR in Crime No.27 of 2019, dated 30.09.2019 on the file of the first Respondent police as against the petitioners.

For Petitioner : Mr. K. Sureshkumar

For Respondents : Mr.K.Suyambulinga Bharathi,
G.A. (CrI. Side) for R1
Mr. V. Malaiyendran for R2

O R D E R

This petition has been filed to quash the FIR in Crime No.27 of 2019, dated 30.09.2019 on the file of the first Respondent police as against the petitioners for the offences under Section 120(b), 465, 468, 471 & 420 of IPC.

2. The learned Counsel appearing for the petitioners would submit that the petitioners did not commit any offences as alleged in the impugned FIR. Without any base, the first respondent police registered a case as against the petitioner in Crime No. 27 of 2019 for the offences under Sections 120(b), 465, 468, 471 & 420 of I.P.C. Due to civil dispute between the parties, a false complaint has been made against the petitioners. Hence they prayed to quash the same.

3.The learned Government Advocate (criminal 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. Perused the materials available on record.

5. 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 step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

6. 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 - *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."

7. In view of the above, this Court is not inclined to quash the FIR. Accordingly, this criminal original petition is dismissed. However, the learned counsel appearing for the petitioner submitted that as far as the petitioners concerned they are also victim. Since they purchased some plots from their vendor and discloses the fact that the plots were originally allotted for open space for public purpose. Suppressing the said facts, the plots were sold out to the petitioners. Infact, they also lodged a complaint as against the vendor and the same is also pending on the file of the first respondent police.

8. Considering the facts and circumstances, the first respondent is directed to collect all the materials from the petitioners and conduct enquiry with the vendor and complete the investigation and file a final report, within a period of Twelve Weeks, from the date of receipt of copy of this Order, before the concerned jurisdictional Magistrate. Consequently, connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar (records)

// True Copy //

Sub Assistant Registrar(CS)



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To

1. The Inspector of Police,
District Crime Branch,
Thoothukudi District.

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

+1 CC to Mr.R.MAHESWARAN, Advocate (SR-96844[F] dated 07/11/2019)

Order made in
CRL.O.P (MD) No. 16162 of 2019
07.11.2019

_MK (03.12.2019) 4P 4C