

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.5945 of 2019
and Crl.MP.No.3339 of 2019

B.Sai Rajesh
S/o.S.Balasubramanian
No.70, Cowley Brown Road,
R.S.Puram, Coimbatore. ... Petitioner/Accused

Vs.

1.The Inspector of Police,
South Police Station,
Tirpur.
[Crime No.3851 of 2011] ...Respondent/Complainant

2.S.Kavitha
W/o.T.Sathyamoorthy,
40, KVB Layout,
Alangadu, Karuvampalayam,
Tirupur - 641 604. ... Respondents/Defacto
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records relating to the case in Crime No.3851 of 2011 pending investigation on the file of the 1st respondent police station and quash the same with regard to the petitioner.

For Petitioner : Mr.K.G.Senthil Kumar

For Respondents

For R1 : Mr.S.Karthikeyan
Additional Public Prosecutor.

For R2 : Mr.MA.P.Thangavel

O R D E R

This petition has been filed to call for the records relating to the case in Crime No.3851 of 2011 pending investigation on the file of the 1st respondent police station and quash the same with regard to the petitioner.

2. The learned Counsel appearing for the petitioner would submit that there is a compromise entered into between the petitioner and the 2nd respondent by a compromise deed dated 28.07.2011. Considering the above fact, the Inspector of Police, CBCID, is directed to consider the said compromise arose between the petitioner / accused and the de-facto complainant while filing the final report. Further, it is seen that FIR registered in Crime No.3851 of 2011 was transferred from the file of the 1st respondent to the file of the Inspector of Police, CBCID, Tirupur. But till today, the CBCID, Tirupur, did not receive the case records from the 1st respondent.

3. Learned Additional Public Prosecutor would submit that the first respondent is trying to get the entire case dairy in respect of Crime No.3851 of 2011 to the file of Inspector of Police, CBCID, Tirupur. The Inspector of Police has not yet received for want of some other reasons. Therefore, the Inspector of Police, CBCID, Tirupur is directed to receive the case bundle from the 1st respondent forthwith.

4. Heard Mr.K.G.Senthil Kumar, learned counsel appearing for the petitioner and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the first respondent and Mr.MA.P.Thangavel, learned counsel appearing for the second respondent.

5. Considering the above facts and circumstances, the 1st respondent is directed to hand over the entire case dairy to Inspector of Police forthwith. On receipt of the same, the Inspector of Police, CBCID, Tirupur, is directed to complete the investigation in a phased manner and to file a final report within a period of four months from the date of receipt of a copy of this order.

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 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."

7. In view of the above discussions, this Court is not inclined to quash the First Information Report. Accordingly, this Criminal Original Petition stands dismissed. However, considering the crime is of the year 2011, the first respondent

is directed to complete the investigation in Crime No.3851 of 2011 and file a final report within a period of four months from the date of receipt of copy of this Order, before the jurisdictional Magistrate, if not already filed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

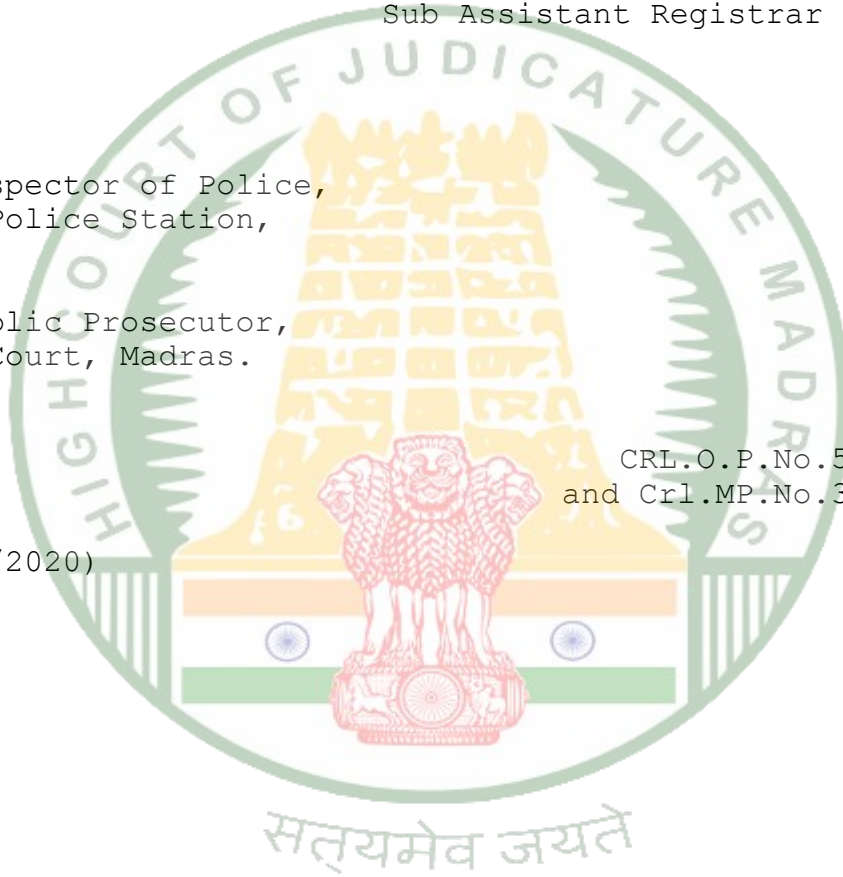
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To

1. The Inspector of Police,
South Police Station,
Tirpur.
2. The Public Prosecutor,
High Court, Madras.

MG(CO)
RMP(16/10/2020)

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and Crl.MP.No.3339 of 2019



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