

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2020

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.34581 of 2019

and

CrI.M.P.No.19176 of 2019

1.N.Ahamed Ali

2.Sahilakthar

3.Prabu

.. Petitioners

/versus/

State by

The Sub Inspector of Police,
Civil Supplies CID, Krishnagiri,
Krishnagiri District.

(Cr.No.122 of 2019)

.. Respondent

Prayer: Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code praying to call for the entire records concerned in Cr.No.122 of 2019 on the file of the Inspector of Police, Civil Supplies CID, Krishnagiri, Krishnagiri District and quash the same in so far as the petitioner is concerned.

For Petitioners

:Mr.C.Prakasam

For Respondent

:Mr.M.Mohamed Riyaz

Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to call for the entire records concerned in Cr.No.122 of 2019 on the file of the Inspector of Police, Civil Supplies CID, Krishnagiri, Krishnagiri District and quash the same.

2. The brief facts of the present case is that the respondent police has seized a lorry bearing Reg.No.KA-01-AD-7155, in which the petitioner has transported 350 bags of rice each bag containing 50kg of rice. Eventhough, the petitioners are no way connected with either in the lorry or rice bags, the respondent police wantonly implicated the petitoners name in the First Information Report. On confession of the 4th accused, the petitioner name has been falsely implicated in this case.

3. The learned counsel appearing for the petitioner submitted that since the investigating officer as well as the defacto complainant are one and same, the Hon'ble Supreme Court as well as the High Court held that if the defacto complainant

and the investigating officer are one and the same, then the entire First Information Report is liable to be quashed.

4. The learned Additional Public Prosecutor submitted that the 1st petitioner is having 33 cases and the 2nd petitioner is having 11 cases. He also submitted that they are the habitual offenders.

5. Heard Mr.C.Prakasam, learned counsel appearing for the petitioner and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the respondent.

6. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in CrI.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. 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 step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

8. In view of the above discussion, this Court is not inclined to quash the FIR. However, considering the crime is of the year 2019, the respondent is directed to complete the investigation in Crime No.122 of 2019 and file a final report within a period of twelve weeks from the date of receipt of copy of this Order, before the jurisdiction Magistrate, if not already filed.

Inspector of Police,
lies CID, Krishnagiri,
i District.

ic Prosecutor,
, Madras.

r.C.Prakasam Advocate srl8623

Crl.O.P.No.34

Crl.M.P.No.19

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True Copy
Sub-Assistant Registrar

To.

2.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.C.Prakasam Advocate sr18623

CrI.O.P.No.34581 of 2019
and
CrI.M.P.No.19176 of 2019

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