



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2020

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No.22904 of 2016

and

Crl.M.P.(MD) No.12021 of 2016

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1. Ramesh Kumar

2. Ganga Rameshkumar

... Petitioners

Vs

1.The Inspector of Police ,
Kanyakumari Police Station,
Kanyakumari District
Cr.No.141/2009

2.K.P.Ramachandra Nair

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to the charge sheet in C.C.No.14 of 2010 on the file of the learned Judicial Magistrate No.I, Nagercoil, Kanyakumari District and quash the same as illegal with regard to the petitioners herein 2nd and 3rd accused.

For Petitioners : Mr.S.Muthumalairaja

For Respondents : Mr.K.Suyambulinga Bharathi
Government Advocate (crl.side) for R1

O R D E R

This petition has been filed to quash the proceedings in C.C.No.14 of 2010 on the file of the learned Judicial Magistrate No.I, Nagercoil, Kanyakumari District.

2. Heard the learned counsel for the petitioners and the learned Government Advocate (criminal side) for the first respondent.

3.A careful perusal of entire materials available on record, the final report discloses a *prima facie* offence against the petitioners and there is no reason to interfere with the same. 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.

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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."

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4.It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.579 of 2019** dated **02.04.2019** in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr.**, as follows:-

" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13.In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

5.Recently, the Hon'ble Supreme Court of India held in respect of the very same issue in **Crl.A.No.1572 of 2019 - Central Bureau of Investigation Vs. Arvind Khanna**, wherein, it has been held as follows:

"19.After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court



has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

The above judgments are squarely applied to this case and as such, the points raised by the petitioners cannot be considered by this Court under Section 482 Cr.P.C.

6. In view of the above discussions, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is also dismissed. It is seen that the proceedings in C.C.No.14 of 2010, pending on the file of the learned Judicial Magistrate No.I, Nagercoil, Kanyakumari District is pending from the year 2010. Therefore, the learned Judicial Magistrate No.I, Nagercoil, Kanyakumari District is directed to complete the proceedings, within a period of six months from the date of receipt of a copy of this order.

7. At this juncture, the learned Counsel for the petitioners submitted that the presence of the petitioners before the Trial Court may be dispensed with.

8. Accepting the said submission, the personal appearance of the petitioners is dispensed with and she shall be represented by a counsel after filing appropriate application. The petitioners shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Judicial Magistrate No.I,

Nagercoil,

Kanyakumari District

<https://hcservices.ecourts.gov.in/hcservices/>



2.-do-Thro
The Chief Judicial Magistrate,
Kanyakumari District

3.The Inspector of Police ,
Kanyakumari Police Station,
Kanyakumari District.

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

+1 CC to M/s.S. MUTHU MALAI RAJA, Advocate (SR-23692[F] dated
02/12/2020)

CRL.O.P (MD) No.22904 of 2016
30.11.2020

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