

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.04.2015

Delivered on : 17.04.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.No.31428 of 2014

and

M.P.Nos.1 and 2 of 2014

1.A.Pandian @ A.P.Raja
2.D.Mohan

... Petitioners

Versus

State represented by
The Inspector of Police,
CCIW, Police, 112-A,
ATT Colony,
Coimbatore-641 018.

... Respondent

Criminal Original petition filed under Section 482 of the Criminal Procedure Code praying to call for the records pursuant to the Final Order passed in C.R.P.No.84 of 2012 dated 22.10.2013 confirming the order of dismissal of C.M.P.No.1262 of 2011 in C.C.No.19 of 2005 dated 15.09.2012 by the learned Judicial Magistrate No.IV, Coimbatore CRP.No.84 of 2012 dated 22.10.2013 by the learned V District and Sessions Judge, Coimbatore in dismissing the plea of discharge of the petitioners and set aside the same.

For Petitioners : Mr.T.S.Rajamohan

For Respondent : Mr.C.Emalias,
Addl. Public Prosecutor

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O R D E R

This petition is filed to call for the records pursuant to the Final Order passed in C.R.P.No.84 of 2012 dated 22.10.2013 confirming the order of dismissal of C.M.P.No.1262 of 2011 in C.C.No.19 of 2005

dated 15.09.2012 by the learned Judicial Magistrate No.IV, Coimbatore CRP.No.84 of 2012 dated 22.10.2013 by the learned V District and Sessions Judge, Coimbatore in dismissing the plea of discharge of the petitioners and set aside the same.

2. Heard Mr.T.S.Rajamohan, learned counsel for the petitioners and Mr.C.Emalias, learned Additional Public Prosecutor appearing for the respondent.

3. Based on a complaint lodged by the Deputy Registrar of Co-operative Societies, a case in Crime No.2 of 2003 was registered by the respondent Police for offences under Section 120B, 467, 406 and 109 IPC against eight persons and these petitioners were shown as A2 and A3. After completing the investigation, the respondent Police filed a Final Report, which was taken on file as C.C.No.19 of 2005 by the learned Judicial Magistrate V, Coimbatore.

4. The petitioners filed CMP.No.1262 of 2011 under Section 239 Cr.P.C for discharging them from the prosecution. The learned Judicial Magistrate passed a detailed order holding that there are sufficient materials against the petitioners/accused No.1, 2 and 3, for framing charges against them and therefore, CMP.No.1262 of 2011 was dismissed on 15.09.2012.

5. Aggrieved by the dismissal, the petitioners approached the Sessions Court by invoking its revisional jurisdiction under Section 397 Cr.P.C and filed CRP.No.84 of 2012. The learned V Additional District and Sessions Judge, Coimbatore dismissed CRP.No.84 of 2012 on 22.10.2013, thereby confirming the order passed by the learned Judicial Magistrate IV, Coimbatore. The learned Sessions Judge has also held that there are sufficient materials against the petitioners for framing charge.

6. It is seen that on the recommendation given by the accused, the Government has sanctioned huge loan of Rs.4Crores and these petitioners/accused had domain over the money. Therefore, they cannot be absolved from criminal liability.

7. Be that as it may, the Sessions Court and the High Court have concurrent revisional jurisdiction under Section 397 Cr.P.C. Under Section 397[3] Cr.P.C, if a person elects to approach the Sessions Court, he is precluded from again approaching the High Court. The learned counsel for the petitioners submitted that he has invoked Section 482 Cr.P.C and that there is miscarriage of justice. The Hon'ble Supreme Court in Ganesh Narayan Hegde Vs S.Bangarappa [1995] 4 Supreme Court Cases 41 has held as follows:

"... 12. While it is true that availing of the remedy of the revision to the Sessions Judge under Section 399 does not bar a person from invoking the power of the High Court under Section 482, it is equally true that the High Court should not act as Second Revisional Court under the garb of exercising inherent powers. While exercising its inherent powers in such a matter it must be conscious of the fact that the learned Sessions Judge has declined to exercise his revisory power in the matter. The High Court should proceed with, it would amount to abuse of process of court or that the interests of justice otherwise call for quashing of the charges."

8. In this case, both the Courts have held that there are sufficient materials for framing charge against the petitioners and the concurrent findings of the court below. This Court is of the view that this is not a case, which the inherent powers of the High Court requires to be invoked for quashing the prosecution.

9. In the result, this petition is dismissed. Consequently, M.P.Nos.1 and 2 of 2014 are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gya

To

1.The District & Sessions Judge No.V, Coimbatore.

2.The Judicial Magistrate No. IV, Coimbatore

3.The Inspector of Police,
CCIW, Police, 112-A,
ATT Colony, Coimbatore-641 018.

+1cc to Mr.T.S.Rajamohan, Advocate, S.R.No.21178

CRL.O.P.No.31428 of 2014

GR/CNR(CO)
CA(27/04/2015)



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