

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

CRL.R.C.No.207 of 2011
and
M.P.No.1 of 2011 and
M.P.No.1 of 2012

1.Kabibal Beevi

2.Kamidal Kani Petitioners/Petitioners/Accused

vs.

State by
The Assistant Commissioner of Police,
High Court Range,
Chennai.

... Respondent/Respondent/Complainant

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Criminal Procedure Code to call for the records in CrIMP No.4698 of 2010 in S.C.No.128 of 2010 on the file of the learned VI Additional Sessions Judge, Mahila Court (FAC), Chennai, to set aside the same and discharge the petitioners from the charges against them.

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

सत्यमेव जयते
JUDGMENT

Material on record discloses that initially, police has registered a case in Crime No.286 of 2008 as Accidental Fire under Section 174 CrPC. Thereafter, police has filed a final report under Sections 498A, 304B and 306 IPC and charges have been framed in SC.No.128 of 2010 on the file of the learned VI Additional Sessions Judge, Mahila Court (FAC), Chennai. Petitioners have filed CrIMP No.4698 of 2010 under Section 227 CrPC to discharge them from the charge. Prosecution has filed their objections. Thereafter, considering the rival submissions, vide order dated 25.01.2011, the learned VI Additional Sessions Judge, Mahila Court (FAC), Chennai, in CrIMP No.4698 of 2010 in S.C.No.128 of 2010, has dismissed the discharge petition. Being aggrieved by the same, the present

revision has been filed in the year 2011.

2.Record of proceedings further shows that initially, Mr.M.Radha Krishnan and Mr.P.Pugalenth, Advocates, at Door No.134, Thambu Chetty Street, Chennai, have filed their memo of appearance in Criminal Revision Case.

3.Record of proceedings further shows that when the revision petition came up for hearing on 17.02.2011, the Honourable Mr. Justice K.N.Basha, has ordered as follows:

"Post the matter before the concerned learned Judge after getting appropriate orders from My Lord The Honourable Chief Justice"

At that stage, CrlRC.No.207 of 2011 was not admitted. Thereafter, after getting orders from My Lord The Honourable Chief Justice, the revision case has been posted before the Honourable Ms. Justice K.B.K.Vasuki.

4.Record of proceedings shows that on 15.03.2011, the Assistant Registrar (Crl.Side), High Court, Madras, has requested the learned VI Additional Sessions Judge, Mahila Court (FAC), Chennai, to send the entire records in CrlMP No.4698 of 2010 in S.C.No.128 of 2010 and after receiving the same, the matter will be listed before this Court.

5.Record of proceedings further shows that when the matter came up for hearing on 24.02.2011, both the learned counsel on record were present. Office had been directed to secure the records from the Lower Court for hearing the revision on 10.03.2011.

6.Record of proceedings shows that revision case has been listed on 05.10.2012. On 05.10.2012, at request of the learned counsel for the petitioners, case has been posted for arguments on 11.10.2012 and thereafter, the matter has been listed on 12.10.2012. On the same day, this Court has ordered as follows:

"Adjourned to 01.11.2012 for disposal or for dismissal."

7.Thereafter, on 02.11.2012, The Honourable Ms. Justice K.B.K.Vasuki, has recorded as follows:

"This Court is not inclined to take up the case due to inevitable reasons. The office is directed to post the case before some other Court after obtaining appropriate order from The Honourable the Chief Justice."

8.After obtaining orders from My Lord The Honourable Chief Justice, the Criminal Revision case, has been posted before the Honourable Mr. Justice B.Rajendran. Record of proceedings shows that on 04.12.2012, on request, the matter has been adjourned by two weeks. Thereafter, on 18.12.2012, when the matter came up for

hearing, this Court has directed the Registry to post the revision on 18.01.2013. On 18.01.2013, this Court has recorded as follows:

"Post after one week as the last chance."

9. Record of proceedings shows that on 28.01.2013, on the request of the learned counsel for both sides, the matter has been posted next week. Record of proceedings further shows that when the revision petition came up for hearing on 03.12.2014, the Honourable Mr. Justice C.T.Selvam has directed the Registry to post the matter on 09.12.2014. Thereafter, it has been adjourned on several occasions.

10. Record of proceedings further shows that Mr.M.Radhakrishnan and Mr.P.Pugalenthi, Advocates, at D.No.34, Thambu Street, Chennai, initially engaged by the petitioners, have given their change of vakalat. Subsequently on 10.12.2014, Mr.J.C.Durairaj, Enrol.No.Ms.51/1987 and Ms.S.Annakkodi, Enrol No.Ms.146/1998, Advocates, have filed a memo of appearance for the accused. After so many hearing dates before the other Honourable Judges, now, this Criminal Revision Case, was listed before this Court on 10.03.2015. When the revision case came up for hearing on 10.03.2015, one Mr.Suresh Kumar, claiming himself to be the Junior counsel attached to the office of Mr.J.C.Durairaj and Ms.S.Annakkodi, the learned counsel on record submitted that counsel on record is not in station. Therefore, Registry was directed to post the case on 11.03.2015. However, the matter is listed only today.

11. On this day, one Mr.M.Subramanian, Advocate, Enrol No.Ms.2613/2014, claiming himself to be the Junior counsel of Mr.J.C.Durairaj and Ms.S.Annakkodi, the learned counsel on record, submitted that the entire cause papers have already been returned to the petitioners about two weeks ago. As stated supra, on 10.03.2015, when the matter came up for hearing, one Mr.Suresh Kumar, Junior counsel attached to the learned counsel on record sought for adjournment, on the ground that his senior is not in station. Now, it is the submission of Mr.M.Subramanian, Enrol No.Ms.2613/2014, attached to the office of Mr.J.C.Durairaj and Ms.S.Annakkodi, the learned counsel on record that the entire cause papers have been returned to the petitioners, along with the memo of appearance. Thus, from the record of proceedings extracted supra, it is evident that the Criminal Revision Case has been listed before two learned Judges of this Court, who have directed the Registry to obtain necessary orders from My Lord The Honourable Chief Justice, to post the revision case before some other learned Judge. Even before The Honourable Mr. Justice B.Rajendran, only adjournments have been sought for. Today on 24.03.2015, Mr.M.Subramanian, Junior counsel attached to the learned counsel on record has submitted that the entire cause papers have been returned to the petitioners.

12.Registry has not put up any fresh memo of appearance, which only indicates that for the past two weeks, the petitioner has not chosen to file any memo of appearance. In the abovesaid circumstances, this Court is inclined to consider the case on merits.

13.Order impugned is extracted hereunder:

"The Petitioners /1 and 2 accused have preferred this petition u/s.227 of Cr.P.C. Praying this Court to discharge the petitioners from the charges levelled against them by the Respondent police in the above case.

2.The Petitioners are the accused and the Respondent is the complainant before this Court.

3.The Respondent police had levelled the charges in the final report filed by them as against the accused for the offences u/s.498(A), 304 (B) and 306 IPC and the case is pending before this Court for framing of charge.

4.The petitioners contention before this Court is that the first petitioner is the mother and the second petitioner is the daughter of 1st petitioner and the 1st petitioner's son Abu bakkar and his wife Ameena Beevi were residing in the 3rd floor of the house, while the 1st and 2nd petitioner are residing in the 1st floor of the premises.

5.On the basis of intimation from the Appollo hospital the Inspector of Police proceeded to the Apollo Hospital and found Aameena Beevi with burn injuries and the statement said to have been recorded and on that basis, the Crime No.286/2008 was registered as against the accused for the offences u/s.498(A) R/W 304(B) and 306 IPC and after completion of investigation final report was filed leveling those charges.

6.The petitioner's further contention is that there are different dying declarations available in the records and those declarations nowhere implicated the accused, as they had demanded dowry or committed any cruelty even during the statement given before the learned Magistrate u/s.32 of the evidence Act also, the deceased has deposed that due to petty quarrel she had committed suicide. None of the witnesses also had implicated the accused as the offenders.

7.In the said circumstances the petitioners pay to discharge them from the charges leveled against them in order to avoid the ordeal of trial.

8.In the counter filed by Additional Public Prosecution, it is contended that there are sufficient materials available in the records to proceed with the trial or to frame the charges and it is not necessary for this Court to appreciate the evidences available before this Court at this stage. Hence, she prays to dismiss the petition.

9. Now, the point that arises for consideration is:

Whether, the materials available before this Court produced by the prosecution are prima facie sufficient to frame the charges or to proceed with the trial?

10. On the basis of final report filed by the B2 Inspector of Police BS Esplanade P.S. The learned VII M.M. was pleased to take up the report as P.R.C. Case 25/2010 and after service of copies of records, and after considering the materials, committed the case before the Principal Sessions Judge for disposal and as the charge levelled the accused are exclusively tried by the Sessions Court and on made over, this Court had received the records and on appearance of the accused, and the case is posted for framing charges. This petition is filed by the petitioners to discharge them from the charges leveled against them by the prosecution.

11. The learned counsel for the petitioners had contended that the deceased had given a statement to police, while she is in the hospital, and subsequently, she had given a statement to the learned Magistrate and further, the statements given by other witnesses also do not disclose any incriminating materials as against the accused and in such circumstances, allowing the accused undergoing ordeal of trial will amount abuse of process of law and on this ground, he prayed to discharge the accused. But, it is disputed by the learned Additional Public Prosecutor.

12. This Court has given anxious -consideration to the materials available before this Court.

13. On perusal of records, it appears that in the inquest conducted by the Revenue Officer, after examining the statements given by the witnesses has come to the following conclusions, which resulted in proceeding with the accused in this crime, which reads as follows :

“திருமதி அம்னா பீவியின் தாய் தந்தையிடம் பெறப்பட்ட வாக்குமூலங்களின் அடிப்படையில் திருமதி அம்னா பீவியின் இறப்பில் வரதட்சணை கொடுமை நிகழ்ந்துள்ளது என தெரிவித்துக் கொள்கிறேன்.”

“On the basis of the statements obtained from the parents of Mrs.Amina Beevi, it is known that the death has occurred due to dowry harassment.”

14. It is settled position of law that this court need not embargo on probing enquiry or need not appreciate the evidence or evaluate statements given by each witnesses but to find out whether, there is any prima facie material available to proceed against the accused in this case.

15.Bearing this principle, and considering the above finding of Revenue Divisional Officer, and considering the contradictory statement of the deceased, this court is not in a position to discharge the accused at present but, the entire materials available before the court will be considered only after examining the witnesses during the trial. So, the petitioners are at liberty to raise all those points at the time of argument of the case.

16.In this view, the petitioners are not entitled for the relief at present because prima facie materials are available to frame the charges as against the accused.

17.In the result, the petition is dismissed."

14.The impugned order is assailed on the ground that the Court below has failed to consider the Dying Declaration of the deceased Amina Beevi, dated 12.03.2008 recorded by the learned XVIII Metropolitan Magistrate, the statement dated 12.03.2008 of the deceased Amina Beevi recorded by the Inspector of Police at Apollo Hospital, Mint Street, Chennai, when she was under treatment and the statement dated 11.03.2008 of the deceased Amina Beevi recorded by Dr.Banumathi at about 04.00PM in proper perspective, and according to the petitioner, a conjoint reading of all these statements would reveal that the act of setting herself to fire was purely voluntary and that there was none behind the act, much less the petitioners. According to the petitioners, failure to consider the said two declarations, in the light of the statement of the deceased given to Dr.Banumathi on 11.03.2008 itself would render the order of the learned Judge is illegal. It is also their submission that the learned Judge ought to have appreciated that the petitioners were innocent, even as per the dying declaration of the deceased Amina Beevi.

15.Upon perusal of the records, the learned Judge, has found that there are incriminating materials to frame a charge under Sections 498 (A), 304 and 306 IPC.

Final Report

Before the Court of VII Metropolitan Magistrate George Town, Chennai
- 600 001

After the completion of enquiry in the case in Crime No.286/2008 on the file of the B2 Esplanade Police Station u/s. Accidental Fire @ 174 Cr.P.C @ 498 A, 304 B and 306 IPC, the final report filed as per sec 173 Cl(i) Cr.P.C and sections 498(A), 304(B) and 306 IPC.

State

Assistant Commissioner of Police,
High Court Range,
Chennai.

Against

1. Kabibal Beevi F/Age 58 years.
W/o. Olimohamed,
No.64/8, Asrath Sahib Street,
Maskan Chavadi, Chennai - 01.

2. Kamithal Kani F/Age 35 years.
W/o. Beermuhaideen,
No. 64/8, Asrath Sahib street,
Maskan Chavadi, Chennai - 01.

B) Nature of Information:

On 12.3.2008 when Thiru Rajasekar, Inspector of Police was on duty in the Police Station, he received an information from the Apollo Hospitals, and on receiving the same he went to the Apollo Hospital to see Tmt. Aameena Beevi, Female 27 years, W/o. Abubucker, residing at Door No. 64/8, Azrath Street, chennai - 01, who was admitted in the Hospital as inpatient for treatment of burns. She gave an oral statement stating that she has been residing in the aforesaid address with her husband and children. She had got married in the year 2002, and has a son and a daughter. Her sister-in-law Kamitha Beevi is residing in the first floor and her husband has a shoe mart in singer street. She had frequent tussle with her mother-in-law and sister-in-law. On 11.3.2008 when her children were playing with her sister-in-law's children a quarrel arose between them, because of this she and her sister-in-law entered into an altercation, and her mother-in-law scolded her with obscene words, and her sister-in-law beat her with her hand. In turn she had beaten back her sister-in-law, then she went into her house and locked the door from inside and immolated herself by pouring kerosene. Later, when she screamed her husband and others barged in by breaking open the doors and admitted her in the Apollo Hospitals for treatment and that nobody can be held responsible for this, this has happened due to her inadvertance and that there were no other issues in the house. As per her statement, Thiru Rajasekar, the Inspector of Police filed a case u/s Accidental Fire and investigation was conducted.

C) Details of the persons who are supposed to know the incidents of this case.

Details of the witnesses and the list of the exhibits are enclosed separately.

D) Is it evident, whether any Crime has been committed in this case? If so, by whom?

On the investigation done in this case, the victim Tmt. Ameena Beevi, female, aged 27 years, W/o. Abubucker, was residing at No.64/8, Asrath Street, Chennai-1 in the third floor along with her Mother-in-law, Father-in-law in a joint family. Her sister-in-law Kamitha Beevi, was residing in the 2nd floor, along with her husband. The victim in this case viz., Ameetha Beevi is the eldest daughter of Thiru Shahjahan and Tmt. Kachifathima, residing at No.64, Saudia Illam, Alivalam Road, Vijayapuram, Thiruvavarur District. She was married to Abubucker, S/o. Olimohammed, Chennai who is the brother of Kachifathima's sister-in-law, on 3rd March, 2002 at Royapuram in the presence of the elders. Abubucker, husband of the victim is running a shoe mart at Parrys, Chennai. At the time of marriage, 100 sovereigns of Gold, utensils, Grinder, Cot, Bureau were given as dowry, as demanded by the bridegroom's family. Their daughter lead her life in the joint family facing small problems. In this situation, Kabibal Beevi, mother-in-law of the victim had a tussle with her for the reason that the elder daughter-in-law had brought 150 sovereigns of gold and that she had brought only 100 sovereigns of gold. After sometime, the mother-in-law and sister-in-law harassed the victim demanding for more jewels. Further, after the delivery of the second child, they demanded for a car. Since her father is a heart patient, she thought that if she asks for it, his health will be affected, so she told her father's friend Selvaraj to convey this to her father in a tactful manner to get a car for her. In this situation, Rs.40,000/- kept in the house was found missing and her father-in-law enquired everybody, for which her mother-in-law, Kabibal Beevi was furious and went to her daughter's house downstairs, and she did not come home for 2 days.

In this situation, on 12.3.2008, at about 15 hours, Ameena Beevi living in a joint family at No.64/8, Asrath Sahib street which is within the Jurisdiction of the B2 Esplanade Police Station, had gone to the house of her sister-in-law in the 2nd floor and had called her mother-in-law, since she had not come home for the past two days. During the dispute which arose at that time, the mother-in-law has scolded Ameena Beevi stating that only because of her illicit relationship with her father-in-law, he had asked her if she had taken the money and had reprimanded her using obscene words. At that time, Ameena Beevi's sister-in-law Kamitha kani had beaten her using her hand. In turn, Ameena Beevi beat her with her hand and went upstairs, locked the door from inside and immolated herself by pouring kerosene. In this situation, the husband of Ameena Beevi and many others broke open the door, entered inside and extinguished the fire and admitted her in Apollo Hospital at Mint. The treatment given to Tmt. Ameena Beevi at Apollo Hospital proved futile and she succumbed to injuries at 2.30 p.m. on 10.4.08.

Since the aforesaid accused No.1 viz. Kabibal Beevi and the accused No.2 viz. Kamithal Kani have harassed Ameena Beevi on several occasions for the sake of dowry and for the purchase of car and have instigated her to the extent of committing suicide, they have committed a crime punishable u/s 498(A), 304(B) and 306 IPC.

E) Have the accused been arrested?

No. The accused have obtained anticipatory bail.

F) Are the accused on bail? Are they on conditional bail?

The accused are on bail.

G) Were the accused produced before the Court as per sec 170 Cr.P.C.?

No.

Hence, I humbly request your Honour to conduct enquiry in this case and to give appropriate punishment to the accused.

Sd/-

Assistant Commissioner of Police,
High Court Range, Chennai-104.

16.I have gone through the materials on record and the final report filed by the police. There are sufficient materials to proceed against the petitioners, for the offences, for which they are charged. In a recent Judgment in Sheoraj Singh Ahlawat and others v. State of Uttar Pradesh and another, reported in (2013) 11 Supreme Court Cases 476, at Paras 12 to 20, the Honourable Supreme Court considered several decisions and held as follows:

"12. The case at hand being a warrant case is governed by Section 239 of the Cr.P.C. for purposes of determining whether the accused or any one of them deserved to be discharged. Section 239 is as under:

"239. When accused shall be discharged.

If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."

A plain reading of the above would show that the Court trying the case can direct discharge only for reasons to be recorded by it and only if it considers the charge against the accused to be groundless.

13. Section 240 of the Code provides for framing of a charge if, upon consideration of the police report and the documents sent therewith and making such examination, if any, of the accused as the Magistrate thinks necessary, the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XIX, which such Magistrate is competent to try and which can be adequately punished by him.

14. The ambit of Section 239 Cr.P.C. and the approach to be adopted by the Court while exercising the powers vested in it under the said provision fell for consideration of this Court in Onkar Nath Mishra and Ors., v. State (NCT of Delhi) and Anr. (2008) 2 SCC 561. That too was a case in which a complaint under Sections 498-A and 406 read with Section 34 of the I.P.C. was filed against the husband and parents-in-law of the complainant-wife. The Magistrate had in that case discharged the accused under Section 239 of the Cr.P.C, holding that the charge was groundless. The complainant questioned that order before the Revisional Court which directed the trial Court to frame charges against the accused persons. The High Court having affirmed that order, the matter was brought up to this Court. This Court partly allowed the appeal qua the parents-in-law while dismissing the same qua the husband.

15. This Court explained the legal position and the approach to be adopted by the Court at the stage of framing of charges or directing discharge in the following words:

"11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of

the commission of that offence." (emphasis supplied)

16. Support for the above view was drawn by this Court from earlier decisions rendered in State of Karnataka v. L.Muniswamy, 1977 Cri.LJ 1125, State of Maharashtra v. Som Nath Thapa, 1996 Cri.LJ 2448 and State of M.P., v. Mohanlal Soni, 2000 Cri.LJ 3504. In Som Nath's case (supra) the legal position was summed up as under:

"if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage." (emphasis supplied)

17. So also in Mohanlal's case (supra) this Court referred to several previous decisions and held that the judicial opinion regarding the approach to be adopted for framing of charge is that such charges should be framed if the Court prima facie finds that there is sufficient ground for proceeding against the accused. The Court is not required to appreciate evidence as if to determine whether the material produced was sufficient to convict the accused. The following passage from the decision in Mohanlal's case (supra) is in this regard apposite:

"8. The crystallized judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused."

18. In State of Orissa v. Debendra Nath Pandhi (2005) 1 SCC 568, this Court was considering whether the trial Court can at the time of framing of charges consider material filed by the accused. The question was answered in the negative by this Court in the following words:

"18. We are unable to accept the aforesaid contention. The reliance on Articles 14 and 21 is

misplaced...Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini trial at the stage of framing of charge. That would defeat the object of the Code. It is well-settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression 'hearing the submissions of the accused' cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the state of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police...

xx xx xx xx

23. As a result of aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material...." (emphasis supplied)

19. Even in Smt.Rumi Dhar v. State of West Bengal (2009) 6 SCC 364, reliance whereupon was placed by counsel for the appellants the tests to be applied at the stage of discharge of the accused person under Section 239 of the Cr.P.C., were found to be no different. Far from readily encouraging discharge, the Court held that even a strong suspicion in regard to the commission of the offence would be sufficient to justify framing of charges. The Court

observed:

"...While considering an application for discharge filed in terms of Section 239 of the Code, it was for the learned Judge to go into the details of the allegations made against each of the accused persons so as to form an opinion as to whether any case at all has been made out or not as a strong suspicion in regard thereto shall subserve the requirements of law...

20. To the same effect is the decision of this Court in Union of India v. Prafulla Kumar Samal and Anr., (1979) 3 SCC 4, where this Court was examining a similar question in the context of Section 227 of the Code of Criminal Procedure. The legal position was summed up as under:

"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge :

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mouth- piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a

trial."

There is no material irregularity. The Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

1.The VI Additional Sessions Judge,
Mahila Court (FAC), Chennai.

2.The Assistant Commissioner of Police,
High Court Range,
Chennai.

3.The Public Prosecutor,
High Court of Madras,
Chennai.

CRL.R.C.No.207 of 2011
and
M.P.No.1of2011and
M.P.No.1of 2012

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