

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.426 of 2015

and

M.P.No.1 of 2015

1. James
2. Madhan
3. Udaya
4. Selvan
5. Babu
6. Suresh
7. Siva
8. Kangan
9. Siga @ Sigamani
10. Govinda Swamy @ Magimai Kuti
11. Appu @ Jayakumar
12. Karuna
13. Meganathan
14. Logan

... Petitioners

vs

State by Inspector of Police
P7, Vellavedu Police Station

... Respondent

Criminal Revision case filed under Sections 397 and 401 of Cr.P.C. against the order dated 02.03.2015 passed by the learned II Additional District Judge, Tiruvelllore at Poonamallee in Crl.M.P.No.362 of 2013 in SC No.143/2013.

For Petitioners : Mr.V.V.Sairam

For Respondent : Mr.V.Arul
Government Advocate (Crl.side)

ORDER

This Criminal Revision Case is preferred as against the order of dismissal dated 02.03.2015 passed by the learned II Additional District Judge, Tiruvelllore at Poonamallee in Crl.M.P.No.362 of 2013 in S.C.No.143 of 2013 in dismissing the discharge petition filed by the petitioners/accused.

2. The main ground raised by the petitioners in this revision is that the Court below without adhering to the mandatory provision as contained under Section 226 of the Criminal Procedure Code has dismissed the discharge petition filed by the petitioners. According

to the learned counsel for the petitioners, the prosecution has to open up the case by describing the charge brought against the accused and by stating what evidence he proposes to prove the guilt of the accused; however, without following the aforesaid procedure, the Court below simply dismissed the petition by stating that the accused persons have filed the discharge petition belatedly. In this connection, the learned counsel for the petitioner relied upon the following decisions of the Hon'ble Apex Court:

1. AIR 1971 SC 1444 [Devilal and another vs. The State of Rajasthan]
2. (2004) 1 SCC 414 [Banti alias Guddu vs. State of M.P.]

and would pray for setting aside the order passed by the Court below.

3. Learned Government Advocate (Criminal Side) would submit that the Court below has clearly stated that the case was taken on file on 30.07.2013 and time was granted upto 20.08.2013 for the accused to appear in the matter to represent their case. Normally, the prosecution on the very first day of the matter would represent before the Court regarding the nature of the case and would seek time for getting instructions. Accordingly, in this case, the accused persons appeared on 20.08.2013 for the hearing and no charges were framed against them till 25.09.2013. Finally, only on 04.10.2013, the charges were framed. However, nearly after 45 days only, the petitioners have filed the discharge petition. In this connection, the learned Government Advocate (Crl.side) also relied upon the decision of the Hon'ble Apex Court reported in (2010) 9 SCC 368 [Sajjan Kumar vs. Central Bureau of Investigation] and would submit that if the materials placed before the Court disclose grave suspicion against the accused, which has not been properly explained, then the Court will be fully justified in framing a charge and proceeding with the trial. Accordingly, the Court below after considering the entire evidence available on record, dismissed the discharge petition, warranting no interference in this revision.

4. Heard both sides and perused the materials available on record.

5. No doubt, as per Section 226 of the Criminal Procedure Code, on the first hearing date, when the accused appears or is brought before the Court in pursuance of a commitment of the case under Section 209, the Prosecutor will open his case by describing the charge brought against the accused. Though the Prosecutor cannot elaborate the entire case on the first hearing date, he would represent that the following are the charges framed against the accused; these are all the witnesses to be examined in the matter etc., and accordingly would seek adjournment of the matter for getting proper instructions from the jurisdictional police station.

6. Here, in the case on hand, the petitioners/accused appeared before the Court on 20.08.2013 and thereafter, the matter was adjourned on 14 occasions, without even a charge being framed and on those occasions, there was no representation on the accused side stating that Section 226 Cr.P.C procedure was not followed. Therefore, as rightly pointed out by the Court below, on the first

hearing date itself, the prosecution has opened up the case and after giving several adjournments, the charges were framed only on 04.10.2013 in the presence of the accused. When that has been done, all other procedures will follow. Further, only after 45 days, the petitioners have come up with the above petition seeking to discharge them from the offences alleged by stating that Section 226 Cr.P.C procedure has not been followed.

7. The next question is regarding 227 of the Criminal Procedure Code. In the decision reported in (2010) 9 SCC 368 [Sajjan Kumar vs. Central Bureau of Investigation], the Apex Court has held as follows:

"19. It is clear that at the initial stage, if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding *prima facie* whether the court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce proves the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

20. A Magistrate enquiring into a case under Section 209 CrPC is not to act as a mere post office and has to come to a conclusion whether the case before him is fit for commitment of the accused to the Court of Sessions. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. If there is no *prima facie* evidence or the evidence is totally unworthy of credit, it is the duty of the Magistrate to discharge the accused, on the other hand, if there is some evidence on which the conviction may reasonably be based, he must commit the case. It is also clear that in exercising jurisdiction under Section 227 Cr.PC, the Magistrate should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

8. With the above principles in mind, if we analyse the case on hand, the Court below only after coming to the conclusion that the prosecution have proved the charges alleged against the accused, dismissed the petition filed by them for discharge.

9. In view of the above, I do not find any reason to interfere with the order passed by the Court below. However, the Court below is directed to dispose of the case as expeditiously as possible. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional District Judge,
Tiruvellore at Poonamallee.
2. The Public Prosecutor, Madras.

Crl RC No.426 of 2015

KU(CO)
Eu 06.10.15



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