

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.8.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 841 of 2015
and
M.P. No. 1 of 2008

Suresh Babu

.. Petitioner

Versus

State represented by Inspector of Police
CID Police Station
Puducherry

.. Respondent

Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. to call for the entire records in connection with the CrI.MP.No.146 of 2014 in S.C.No.83 of 2012 dated 23.2.2015 and set aside the same and consequently, discharge the petitioner from the charges levelled against him under Section 342, 199, 201, 301 read with 34 IPC.

For Petitioner : Mr.P.Parthiban

For Respondent : Mr.M.R.Thangavelu
Government Advocate (Puducherry)

ORDER

This revision is filed challenging the order of dismissal dated 23.02.2015 passed by the learned II Additional Sessions Judge, Puducherry thereby refusing to discharge the petitioner from the purview of criminal prosecution.

2. According to the prosecution, on 09.11.2011, near main gate of Ceramic Regency factory, Yanam, the deceased Devu Sathyababu was picked up by the Yanam Police and detained at Police Station illegally from 09.11.2011 to 11.11.2011 without any record. Due to intolerable torture by the Yanam police personnel, including the petitioner, he consumed poison, which was seized and kept in the police station in connection with another case in Cr.No.172 of 2011 under Section 174 of Cr.P.C. dated 11.11.2011 of Yanam police station. Therefore, a case has been registered against the petitioner/accused for the offence under Section 342, 199, 201 and 302 IPC read with 34 IPC.

3. According to the petitioner, there is no iota of evidence available on the records to show that the accused administered poison to the deceased. According to him, there is no direct involvement of the accused in this case. The alleged poison was

not in the station at all. According to the petitioner, the deceased came to the police station in the evening at 5.30 p.m., and complained that he had consumed poison in his house at 5.00 p.m due to frustration in his life and, therefore, immediately, he was taken to the hospital by the police personnel. Hence, according to the petitioner, the alleged offence made against him is not substantiated by any evidence and in such event, he is entitled for discharge.

4. The learned counsel for the petitioner further submitted that a false case has been foisted against the petitioner and there is no direct evidence made available with regard to the involvement of the accused in the commission of offence. The learned counsel further submitted that the petitioner has been unnecessarily dragged on in this case. Therefore, the learned counsel submitted that the petitioner need not be subjected to the ordeal of trial in the criminal case.

5. The learned Government Advocate appearing for the respondent would submit that the petitioner has to face the trial and only after trial, his guilt or otherwise can be proved. The prosecution has made available material evidence to prove the guilt of the petitioner. Therefore, in the facts and circumstance of the case, the court below is justified in dismissing the discharge petition filed by the petitioner and he prayed for dismissal of the Criminal Revision Case.

6. I heard the learned counsel for the petitioner and the learned Government Advocate (Puducherry) for the respondent and perused the materials available on record.

7. The petitioner herein was arrayed as A-1 in this case. He was working as Sub-Inspector of Police in the Yanam Police Station during the relevant period. Accused No.2 was working as Selection Grade Assistant Sub-Inspector of Police of the Station. A-3 was working as a Police Constable and A-4 was working as Selection Grade Police Constable during the relevant time. The fifth accused was working as Police Constable during the relevant period. It is the case of the prosecution that there are sufficient number of independent witness made available to speak about the illegal detention of the deceased Deva Sathibabu at Yanam Police Station from 09.11.2011 to 11.11.2011. It is the further case of the prosecution that the deceased was handcuffed in the police station and he was tied with a leading chain in the wall in the police station. The prosecution also relied on the Revenue Official witnesses to speak about the seizure of Monocrotom poison from the scene of crime. However, there was no record made available in the Yanam Police Station file for seizure of the poison. It is specifically contended on behalf of the prosecution that as per the expert opinion, the deceased had consumed the same poison which was seized and kept in the police station in connection with the case in Crime No. 172 of 2011. As mentioned above, the seizure of the material objects in Crime No.172 of 2011 has not been recorded and the seized poisonous substance was also made available near the deceased in the Yanam Police Station, in a reachable position, which made him to consume the poison.

8. As rightly pointed out by the trial Court, the accused No.1 admitted himself in para No.8 of the petition that "as soon as the deceased consumed poison, the second accused had sent him to the hospital, however, the second accused failed to make arrangements to record the dying declaration of the deceased. However, a statement was recorded by the Duty Doctor which formed part of the first information report. Even in the statement, the deceased has not stated anything relating to frustration in his life. In fact, the wife of the deceased was also present in the hospital at the relevant time, on information about hospitalisation of the deceased. As rightly pointed out by the trial court, whether the deceased voluntarily consumed the poison or it was administered by the deceased can be determined only at the time of trial especially the postmortem report does not reveal any external injuries on the body of the deceased. The Court below also pointed out that the duty doctor has categorically stated that civil dressed persons including the deceased came to the hospital and it was referred as a case of poison consumption. Further, the General Diary, interrogation Register etc. of the Yanam Police station also confirms the illegal detention of the deceased. In view of such circumstances, I am of the view that the Court below is right in dismissing the discharge petition filed by the petitioner and the petitioner has to face the trial to disprove the case projected by the prosecution.

9. At the time of framing the charge, the Court has to only consider the records of the case and the documents produced by the prosecution to conclude whether a prima facie case is made out to prove the charges or not. Only during the course of trial, the prosecution will be in a position to prove or fail to prove the guilt against the petitioner. In this context, it is useful to refer the judgment of the Honourable Supreme Court in the decision reported in (State of Madhya Pradesh vs. S.B. Johari and others) (2000) 2 Supreme Court Cases 57, wherein, in para-4, it is held as follows:-

"4.....The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any, cannot show that the accused committed the particular offence. "

10. Similarly, in the decision reported in (Om Wati (Smt) and another vs. State, through Delhi Admn., and others) (2001) 4 Supreme Court Cases 333 it was held as follows:-

"7. Section 227 of the Code provides that if, upon consideration of record of the case and the documents submitted herewith, the Judge considers that there is no sufficient ground for

proceeding against the accused, he shall discharge the accused for which he is required to record his reasons for so doing. No reasons are required to be recorded when the charges are framed against the accused persons.....

8. At the stage of passing the orders in terms of Section 227 of the Code, the Court has merely to peruse the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. If upon consideration the Court is satisfied that a prima facie case is made out against the accused, the Judge must proceed to frame charge in terms of Section 228 of the Code. Only in a case where it is shown that the evidence which the prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in the cross-examination or rebutted by defence evidence cannot show that the accused committed the crime, then and then alone the court can discharge the accused. The court is not required to enter into meticulous consideration of evidence and material placed before it at this stage.....

10. A three Judge bench of this Court in Supdt. & Remembrancer of Legal Affairs, W.B. vs. Anil Kumar Bhunjai reminded the Courts that at the initial stage of framing of charges, the prosecution evidence does not commence. The court has, therefore, to consider the question of framing the charges on general considerations of the material placed before it by the investigating agency. At this stage, the truth, veracity and effect of the judgment which the prosecution proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding an accused guilty or otherwise is not exactly to be applied at the stage of framing the charge. Even on the basis of a strong suspicion founded on materials before it, the court can form a presumptive opinion regarding the existence of factual ingredients constituting the offence alleged and in that event be justified in framing the charges against the accused in respect of the commission of the offence alleged to have been committed by them....."

11. It is evident from the above decisions that at the stage of framing of charge, the Court has to only see whether there are prima facie evidence available to charge the accused and the Court cannot appreciate the validity or reliability of such evidence at that stage. Keeping in view the above dictum laid down by the Honourable Supreme Court to the facts of this case, I am of the view that it is premature on the part of the petitioner to have filed the

petition for discharge and it was rightly refused by the trial Court. I do not find any reason to interfere with such a well considered order passed by the Court below. It is always open to the petitioner to disprove the charges against him by filing documentary evidence or examining the witnesses on his side during the course of trial. The petitioner is also at liberty to raise all the points which he has raised in the present Criminal Revision case before the court below during the course of trial. It is made clear that this Court is not expressing any opinion with regard to the merit of the case. The Court below shall decide the matter independently, on merits and in accordance with law, without taking note of any of the observations made in this Criminal Revision Case as they are meant for disposal of this Criminal Revision Case alone.

12. In the result, the Criminal Revision case is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar
/true copy/
Sub Asst. Registrar

ga/rsh

To

1. The Inspector of Police
CID Police Station
Puducherry

2. The II Additional Sessions Judge
Puducherry

3.The Public Prosecutor(Pondicherry)
High Court, Madras

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