

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-04-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case Nos. 391 and 392 of 2009
and
M.P. Nos. 1 and 1 of 2009

M.Murugesan .. Petitioner in Crl.R.C.No.391/2009

K.Syed Razack .. Petitioner in Crl.R.C.No.392/2009

Versus

V.N.Venkata Narayana Reddy .. Respondent in both Crl.R.Cs.

Criminal Revision Cases filed under Sections 397 read with 401 of Cr.P.C. against the common order, dated 25.11.2008, made in Crl.M.P. Nos. 2115 and 2451 of 2007 in C.C. No. 4588 of 1999 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai.

For Petitioners : Mr.R.Sivaprakasam
in both revisions

For Respondent : No Appearance
in both revisions

ORDER

The petitioners, who were arrayed as accused Nos. 1 and 2, in C.C.No. 4588 of 1999 have filed Crl.M.P.Nos.2115 and 2451 of 2007 under Section 245 Cr.P.C., seeking to discharge them from the case in C.C.No.4588/1999 pending on the file of the Chief Metropolitan Magistrate, Egmore, Chennai, for the alleged offence under Section 406 r/w. 34 IPC. The said petitions were dismissed by the Trial Court, by common order dated 25.11.2008. Aggrieved against the same, the present Criminal Revision Cases are filed.

2. The case of the respondent/complainant is that the complainant is the owner of the articulated vehicle bearing Regn.No.ADC 2895, which was seized by the Central Crime Branch, Egmore, Chennai, in connection with the Central Crime Branch X.Cr.No.1608/94, based upon the complaint filed by the first accused in M.P.No.2570 of 1994 in the Court of the Additional Chief Metropolitan Magistrate, Chennai. The said vehicle was directed by the said Court to be placed in the custody of the second accused. The complainant filed a petition in M.P.No.2830 of 1994 before the Additional Chief Metropolitan Magistrate, Chennai, under Section 451 of Cr.P.C. seeking custody

of the vehicle. The said Court was pleased to order interim custody of the vehicle to the complainant. However, the complainant alleging that some spare parts were missing refused to take possession of the vehicle and he has filed a complaint to take action against the accused under Section 406 r/w. Section 34 of the Indian Penal Code.

3. Mr.R.Sivaprakasam, learned counsel appearing for the petitioners/ accused would submit that to constitute an offence under Section 406 IPC, the petitioners/accused should have been entrusted with some property and the accused should have misappropriated the same, when the complainant has not proved that the petitioners/accused were entrusted with the vehicle, the offence under Section 406 IPC is not made out against the petitioners and hence, the petitioners have got every legal right to seek for the discharge. He would further submit that the evidence let in by the complainant or the evidence of P.Ws. 2 and 3 do not make out any criminal offence, muchless, an offence under Section 406 r/w. 34 IPC.

4. Today, when the matter is taken up, there is no representation for the respondent. However, the respondent/complainant has filed a counter before the Trial Court, wherein, he has averred that the complainant was examined on 13.03.2000 and one Mr.Sarangan and the Court Staff were examined on 22.05.2000 and after examination of the witnesses, since, it makes out a charge of misappropriation, the contention of the petitioners to discharge has to be rejected.

5. Heard the learned counsel appearing for the petitioners. Continuously, there is no representation for the respondent. Hence, the main Criminal Revision Cases are taken up for final disposal.

6. It is seen from the records that the case in C.C.No. 4588 of 1999 is of the year 1999. The complainant was examined as P.W.1 on 13.03.2000. P.W.2/ Sarangan and the P.W.3/Court Staff were examined on 22.05.2000. Thereafter, the discharge petitions were filed in the year 2007 and they were dismissed on 25.11.2008. The present revisions were filed on 02.03.2009, with condone delay petition and stay petitions. However, it is seen that stay was not granted by this Court. Further more, the fate of the present position of the case in C.C.No. 4588 of 1999 is not known. Today, when the matter is called, the respondent/complainant is not present before this Court. With this background, when we analyse the order passed by the Trial Court, it is seen that the discharge petitions have been filed mainly on the ground that there is no entrustment of the vehicle to the petitioners/accused and the entrustment has not been proved, but, it is seen that the vehicle has been in the custody and possession of the first accused at M/s.Bharat Trailers at No.49/1, Bangalore Bye Pass Road, Poonamallee, Chennai, in which Company, the first accused is a Partner, from where, the delivery of the vehicle was taken by the complainant. Further,

if the evidence of P.Ws. 1, 2 and 3, are cogently taken into consideration, as rightly pointed out by the Trial Court, a prima facie case has been made out against the accused. If the Trial Court finds that there is no charge made out against the accused, the Court can discharge the petitioner, but, the Trial Court ultimately came to a prima facie conclusion that a charge has been made out against the accused and whether the entrustment was made to the petitioners or not can be decided only at the time of pronouncing the judgment and not at the time of considering the discharge petitions. No doubt, as per Section 245 Cr.P.C., at any time prior to the pronouncing of judgment, if the Court feels, after the examination of witnesses, no case made is out, can discharge the accused. The mere bald allegations made by the petitioner/accused that there is no entrustment alone cannot be a ground to discharge the accused and it can be decided only at the time of pronouncing the judgment. I do not find any reason to interfere with the reasoned order of the Trial Court.

7. In the result, these Criminal Revision Cases are dismissed and the common order, dated 25.11.2008, made in CrI.M.P. Nos. 2115 and 2451 of 2007 in C.C. No. 4588 of 1999 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai, is confirmed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar (Judicial)

/true copy/

Sub Asst. Registrar

paa

To

The Chief Metropolitan Magistrate,
Egmore, Chennai.

WEB COPY

CrI.R.C. Nos. 391 and 392 of 2009

KJI (co)
kk 18/5