

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.08.2015

Coram

The Honourable Mr. Justice B.RAJENDRAN

Crl. R.C.Nos.498 & 499 of 2009
& M.P.Nos.1 & 1 of 2009

V.Bhuvaneshwaran .. Petitioner in Crl.Rc.No.498/09

R.Tamilselvan .. Petitioner in Crl.Rc.No.499/09

vs.

1.State rep. by
The Inspector of Police (Crime)
R.5 Virugambakkam Police Station,
Chennai.

2.Alima @ Shaina Begum @ Shanu
... Respondents/Complainant and
Accused in both the Crl.Rcs.

Crl.R.C.Nos.498 & 499 of 2009 : These Criminal Revision petitions have been filed under Sections 397 r/w 401 of Criminal Procedure Code to call for the records in Crl.M.P.Nos.932 & 933 of 2009 in Crime No.1158 of 2008 in R.5.Virugambakkam Police Station, on the file of the IX Metropolitan Magistrate, Saidapet, Chennai, dated 23.04.2009 and to set aside the order and issue direction to discharge the sureties and pass such further orders.

For petitioners : Dr.G.Krishnamoorthy
for M/s.J.B.Solomon Peter Kamaldos

For respondent-1 : Mr.V.Arul, GA (Crl.side)

For respondent-2 : No Appearance

COMMON ORDER

As against the order passed by the Court below dated 23.04.2009 both the sureties have come up with these petitions and hence, these two revisions are taken up together for final disposal.

2. These Criminal Revisions have been filed against the discharge application filed under Section 444 of Cr.P.C. Both the petitioners stood as sureties in respect of a case in Crime No.1158 of 2008. It is the case of the petitioners that they stood as sureties in the case in C.C.No.11223 of 2008 and after some time, the said accused had been remanded in connection with the case in Crime Nos.146 & 127 of 2009. It is contended by the revision petitioners that since they were the known each other, they stood as a guarantors for the accused in one particular case alone. After furnishing surety only they came to know about the attitude of the accused that she is habitual offender. So, they sought for discharging their sureties before the court below.

3.It is contended by the learned counsel for the petitioners that without considering the averments made in the petition that the revision petitioners stood only as a sureties on humanitarian ground and since they came to know the attitude of the accused recently, the petitioners decided to withdraw the sureties. However, without considering the request made by the petitioners herein, the Court below had erroneously dismissed the petition filed by them for discharging their sureties. Hence, they sought for allowing the revision petitions.

4. Learned Government Advocate (Crl.side) appearing for the first respondent would submit that the case in Crime No.1158 of 2008 is still pending and it may not appropriate to discharge the petitioners from the sureties, since there will not be any binding on the accused.

5. I have heard the submissions made on either side and have perused the materials available on record.

6. It is worthwhile to extract Section 444 of Cr.P.C. which would read thus:

(1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

(2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to jail.

7. In view of the above settled position, the person who has given surety has got liberty to seek for discharging him/them from the same. It is an admitted fact that the concerned accused is also appearing before the court below regularly and is facing trial. Therefore, I am of the view that the Court below can very well consider the request of the petitioners. But at the same time, in view of the nature of the offence committed by the concerned accused, the Court shall insist upon the accused to substitute a fresh surety.

8. Accordingly, these two Criminal Revision Petitions are allowed and the matter is remitted back to the court below for discharging the petitioners from the sureties only after substituting necessary, adequate surety from the accused, by the learned IX Metropolitan Magistrate, Saidapet, Chennai in the manner known to law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Smi

To

1. The IX Metropolitan Magistrate, Saidapet, Chennai.
2. The Public Prosecutor, High Court, Madras.
3. The Inspector of Police (Crime)
R.5 Virugambakkam Police Station,
Chennai.

+ 2 ccs to M/s. J.B. Solomon peter Kamaldos, Advocate Sr.45476, 45477

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AD(CO)
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