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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Cr1.R.C.(MD)Nos.412 and 422 of 2014

and

M.P.(MD)Nos.1,1,2 and 2 of 2014

Cr1.R.C.(MD)No.412 of 2014

Tamilmani : Petitioner/Petitioner/
Accused No.1

Vs.

1. Kannaiah : Respondent/Respondent/
Petitioner

2. The State represented by
The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai. : Respondent
(R.2 is impleaded as per the
order of this Court dated 16.04.2015)

PRAYER: Petition is filed under Section 397 r/w 401 of the Code of Criminal Procedure to set aside the order dated 06.06.2014 made in Cr1.M.P.No.3262 of 2013, in S.C.No.27 of 2013, on the file of the Sessions Judge, Sivagangai.

For Petitioner : Mr.Veera Kathiravan
For Respondents : Mr.S.Jayakumar
for R.1
: Mr.C.Mayilvahan Rajendran
Additional Public Prosecutor
for R.2

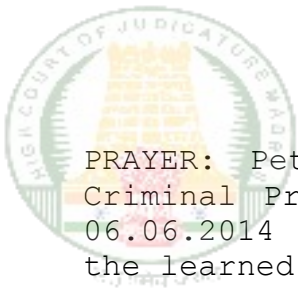
Cr1.R.C.(MD)No.422 of 2014

M.S.P.Ragavan Chettiar : Petitioner/Petitioner/
Accused No.2

Vs.

1. Kannaiah : Respondent/Respondent/
Petitioner

2. The State represented by
The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai. : Respondent
(R.2 is impleaded as per the
order of this Court dated 16.04.2015)



PRAYER: Petition is filed under Section 397 r/w 401 of the Code of Criminal Procedure to call for the records relating to the order dated 06.06.2014 in Cr.M.P.No.3623 of 2013 in S.C.No.27 of 2013, on the file of the learned Sessions Judge, Sivagangai and set aside the same.

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For Petitioner : Mr.S.Ravi
For Respondents : Mr. S.Jayakumar
for R.1
: Mr.C.Mayilvahana Rajendran
Additional Public Prosecutor
for R.2

COMMON ORDER

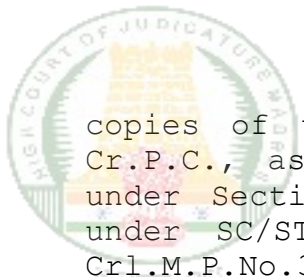
The petitioners are accused Nos.1 and 2 in S.C.No.27 of 2013, on the file of the learned Sessions Judge cum the Special Court under the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act 1989, Sivagangai. The petitioners filed Cr.M.P.No.3262 of 2013 and Cr.M.P.No.3263 of 2013 respectively seeking discharge. The lower Court has taken cognizance of offence under Section 3(1)(IV) of SC/ST Act. By order dated 06.06.2014, the lower Court has dismissed the said miscellaneous petitions, thereby declining to discharge the petitioners. As against the same, the petitioners are before this Court with these revisions.

2. When these revisions were filed, the State was not originally added as a respondent. These revision petitions have been pending from the year 2014. When it was pointed out to the learned Counsel on either side that the Special Court, being a Sessions Court, the prosecution should be conducted only by a Special Public Prosecutor, the learned Counsel agreed that the State should be impleaded as party. Accordingly, the State represented by the learned Additional Public Prosecutor of this Bench was impleaded as second respondent.

3. The case of the prosecution is as follows:

(i) Mr.Kannaiah, the first respondent herein filed a private complaint against 19 persons, alleging that they had committed various offences under the provisions of SC/ST Act. The learned Magistrate, before whom the private complaint was filed, dismissed the complaint, under Section 203 Cr.P.C.. As against the same, a revision was filed by the respondent before the Court of Sessions in Crl.R.P.No.18 of 2009. By order dated 10.08.2011, the learned Sessions Judge set aside the said order of the learned Magistrate and

held that there was *prima facie* case against the petitioners herein and one Mr.A.Thirunavukkarasu to proceed further. Accordingly, the learned Magistrate proceeded against these petitioners and Mr.A.Thirunavukkarasu. Against the order of the learned Sessions Judge, the petitioners filed two criminal revisions before this Court in Crl.R.C.No.811 of 2011 and Crl.R.C.No.812 of 2011. By order dated 06.07.2012, this Court dismissed the revision petitions and confirmed the order of the learned Sessions Judge. As against the same, the petitioners took out the matter by way of Special Leave Petitions before the Honourable Supreme Court, but failed. Thereafter, the learned Magistrate proceeded further, supplied



copies of the statements of the witnesses recorded under Section 202 Cr.P.C., as required under Section 208 Cr.P.C. and committed the case under Section 209 Cr.P.C. to the Court of Sessions cum Special Court under SC/ST Act. Before the Sessions Court, the petitioners filed Crl.M.P.No.3262 of 2013 and Crl.M.P.No.3263 of 2013 seeking discharge.

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(ii). The learned Judge dismissed those two petitions only on the ground that such discharge petitions were not maintainable. Aggrieved over the same, the petitioners have come up before this Court with these two revisions.

4. I have heard the learned Counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and Mr.S.Jayakumar, learned Counsel appearing for the first respondent. I have also perused the records carefully.

5. The only short question which needs to be answered in these revisions is as to whether the lower Court was right in dismissing the miscellaneous petitions, as not maintainable. Without going into the merits of the case, in my considered view, the lower Court was not right in dismissing the petitions. While taking cognizance under Section 193 Cr.P.C. as held by the Honourable Supreme Court in *CREF Finance Ltd., Vs. Shree Shanthi Homes (P) Ltd., and Another* reported in (2005)7 Supreme Court Cases 467, the Court is required to look for a *prima facie* case to proceed further. If the Court once finds *prima facie* material to proceed further, the Court would go ahead with the further proceedings. Thereafter when the accused seeks discharge, the court will have to again examine the materials and find whether there are grounds to proceed further by framing charges. The standard of satisfaction of the court for the purpose of taking cognizance and the standard of satisfaction of the court for the purpose of framing charges are understandably different and both cannot be equated. If an order, taking cognizance on the satisfaction that there is *prima facie* case, is put as a bar for the Court to discharge the accused at a later stage, then in no case, the accused can obtain an order of discharge and as a result, the provision for discharge will become redundant and meaningless. Thus in my considered view, the lower Court was not right in dismissing the petitions by stating that the petitions for discharge are not maintainable. The lower Court ought to have considered all these materials as required under Section 227 Cr.P.C., afforded an opportunity to the petitioners and Public Prosecutor and then ought to have decided the matter. Thus the order of the lower Court deserves to be interfered with.

6. In the result, both the Criminal Revision Cases are allowed and the impugned order of the learned Sessions Judge is set aside and Crl.M.P.No.3262 of 2013 and Crl.M.P.No.3263 of 2013 are remanded back to the learned Sessions Judge cum Special Court under the SC/ST Act, Sivagangai who shall hear the petitioners, the learned Special Public Prosecutor and consider all the relevant documents and records as required under Section 227 Cr.P.C. and then pass a detailed order on merits. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CO)

/True copy/



To

1. The Sessions Judge cum Special Court under SC/ST Act,
Sivagangai

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to M/s.Veerakathiravan, Advocate in SR.22699

+1CC to M/s.S.Ravi, Advocate in SR.23135

+2CC to M/s.S.Jeyakumar, Advocate in SR.22754 & 22755

CrI.R.C.(MD)Nos.412 and 422 of 2014
and
M.P.(MD)Nos.1,1,2 and 2 of 2014
27.04.2015

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