



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.12.2015

CORAM

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THE HONOURABLE MR.JUSTICE M.VENUGOPAL

Crl.R.C.(MD).No.578 of 2015

and

M.P.(MD).No.1 of 2015

A.Kanagasabapathi

: Petitioner/ Petitioner/ A6

-Vs-

State through

The Inspector of Police,
Usilampatti Town Police Station
(Cr.No.549 of 2011)

: Respondent/Respondent/
Complainant

PRAYER: Petition is filed under Section 397 r/w. 401 of the Code of Criminal Procedure praying to call for the records relating to the order dated 23.11.2015 made in Crl.M.P.No.4490 of 2015 in C.C.No.130 of 2012 on the file of the District Munsif cum Judicial Magistrate No.I, Usilampatti and set aside the same and allow the above Criminal Revision.

For Petitioner : Mr.S.Sankar

For Respondent : Mr.P.Kandasamy

Government Advocate (Crl.side)

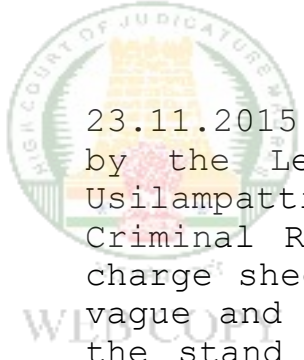
ORDER

The Petitioner/A6 has preferred the present Criminal Revision Petition before this Court praying for passing of an order by this Court in calling for the records relating to the order dated 23.11.2015 in Crl.M.P.No.4490 of 2015 in C.C.No.130 of 2012 passed by the Learned District Munsif cum Judicial Magistrate No.I, Usilampatti and set aside the same.

2.The Learned District Munsif cum Judicial Magistrate No.I, Usilampatti, while passing impugned order in Crl.M.P.No.4490 of 2015 in C.C.No.130 of 2012 (filed by the Revision Petitioner/A6, as petitioner under Section 239 of Cr.P.C.) at Paragraph No.9 had inter alia observed that ... "Going by materials available on record, at this stage, it cannot be held that the accused had not played any deception, when he collected the deposits from the depositors" and resultantly dismissed the petitioner.

<https://hcservices.courts.gov.in/hcservices/>

3.Being dissatisfied with the order of dismissal dated



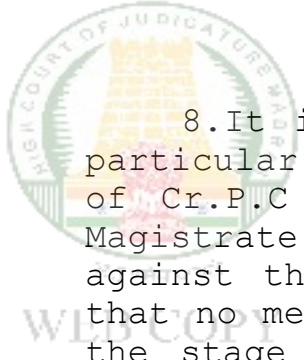
23.11.2015 in Crl.M.P.No.4490 of 2015 in C.C.No.130 of 2012 passed by the Learned District Munsif Cum Judicial Magistrate No.I, Usilampatti, the Revision Petitioner/A6 has projected the instant Criminal Revision Petition before this Court contending that the charge sheet laid in the present case by the prosecution was very vague and without any material particulars. Further, it is also the stand of the petitioner that there is no complaint from the individual receipt holders and there is no prima facie material evidence to prove the alleged offence in issue.

4.The Learned Counsel for the Petitioner/A6 forcefully projects an argument that the de-facto complainant has no authority to file complaint, in as much as, witness 1 to 7 are all Presidents and Secretaries of a Trust and not receipt holders.

5.It is the contention of the Learned Counsel for the Petitioner/A6 that except the complaint, the materials placed before the Court would not make a prima facie case against the Petitioner/A6 in respect of the alleged offences. Also that the plea of the Petitioner/A6 is that he had not collected any amount from the de-facto complainant or from anybody else and as such, the trial Court had no such reference made by the trial Court at Paragraph No.9 of the impugned order in **Crl.R.C. (MD) .No.447 of 2013 between Bharatharaj vs. The State rep by the Inspector of Police and another**, has no relevance or bearing on the facts and circumstances of the present case.

6.Per contra, it is the submission of the Learned Government Advocate (Crl.side) that in First Information Report in Crime No.549 of 2011 in C.C.No.130 of 2012 on the file of the Trial Court, the complainant one D.Thanalakshmi(Secretary) had mentioned the name of the petitioner/A6 along with other accused and added further, she had stated that one English man, the Sarvodaya Zonal incharge one Kanagasabapathi(A6) had taken part in the meeting and they spoke in such a manner to instil confirms in them and trusting them, they should remit the amount etc. Furthermore, it is represented on behalf of the Respondent/State that before the trial Court in C.C.No.130 of 2012, the trial of the main case had commenced by the examination of P.W.1 in chief and the case now stands posted to 16.12.2015 for examination of P.W.1.

7.As such, it cannot be said that the Petitioner/A6 is not involved in the offence as alleged by the prosecution. Moreover, it is for the trial Court to evaluate the evidence of all witnesses to be examined on the side of the prosecution and also to assess the materials collected by the prosecution, during the course of investigation. As such, the Learned Government Advocate (Crl.side) has prayed for dismissing the Criminal Revision Petition filed by the Petitioner/A6.



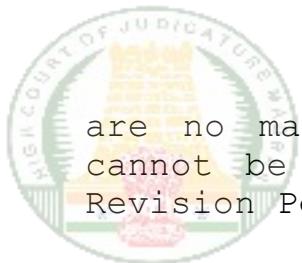
8. It is to be pointed out that an obligation to discharge a particular person/accused in terms of ingredients of Section 239 of Cr.P.C would arise only when the concerned Court / Learned Magistrate in his opinion considers that the charges levelled against the accused is a groundless one. It is to be remembered that no meticulous analysis of materials need to be undertaken at the stage of framing the charges. Even a very strong suspicion based on the materials available on record before the trial Court is just and sufficient for framing of charges. If there are prima facie materials to frame necessary charges against the accused, the said charge cannot be said to be without any basis and an accused cannot be discharged by invoking the benefit of Section 239 of Cr.P.C., in the considered opinion of this Court.

9. At this stage, the Learned Counsel for the Petitioner/A6 brings it to the notice of this Court that except the name of the Petitioner/A6 finding place in FIR that he took part in the meeting along with a English man and others and spoke in a manner to instil confirm etc., the witness examined under Section 161(3) of Cr.P.C., had not implicated the name of the petitioner/A6. As such, the Petitioner/A6 is entitled to be discharged from the charges levelled against him in C.C.No.130 of 2012.

10. In effect, the pith and substance of the plea of the petitioner/A6 is that there is no sufficient evidence showing the involvement of the petitioner/A6 and as such, the charge framed is groundless and that he is entitled to be discharged from the case and viewed in that perspective, the Criminal Revision Petition(MD) No.578 of 2015 filed by the petitioner/A6 is to be allowed by this Court in furtherance of substantial cause of justice.

11. It is true that even a strong suspicion against the accused in a given case, cannot take the place of proof of guilt on the conclusion of the trial of the case, but at the formal stage, if there is suspicion at least, a strong suspicion, it leads a one to think that there is enough ground for presuming that the accused had committed the offence, then it is not open to the concerned Court to take a stand that there is no sufficient ground for proceedings against an Accused.

12. Be that as it may, on a careful consideration of respective divergent contentions and also this Court taking note of the fact that the name of the Petitioner/A6 was made mentioned of in the First Information Report filed by the De-facto complainant and also this Court taking note of yet another fact that the trial of main case in C.C.No.130 of 2012 on the file of the Learned District Musnif cum Judicial Magistrate No.I, Usilampatti, had commenced and now, the case is posted for cross-examination of <https://hdservices.courts.gov.in/hdservices/> stage, this Court is of the considered view that the relief sought for by the petitioner in the Criminal Revision Case to allow the said revision petition on the ground that there



are no materials available on record against the petitioner/A6 cannot be acceded to. Viewed in that perspective, the Criminal Revision Petition fails.

13. In the result, the Criminal Revision petition is dismissed. The order dated 23.11.2015 made in CrI.M.P.No.4490 of 2015 in C.C.No.130 of 2012 passed by the Learned District Munsif cum Judicial Magistrate No.I, Usilampatti, is confirmed for the reasons assigned in this Criminal Revision. It is made clear by this Court that the dismissal of the present Criminal Revision Case will not preclude the petitioner/A6 to raise all factual and legal pleas before the trial of the case in C.C.No.130 of 2012 and in this regard the trial Court is directed to provide adequate opportunities to the respective parties in the manner known to Law and in accordance with Law. Consequently, the connected M.P. is also closed.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The District Munsif cum Judicial Magistrate No.I,
Usilampatti.
2. The Inspector of Police,
Usilampatti Town Police Station,
Madurai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO MR.S.SANKAR, ADVOCATE IN SR NO. 71902

NS

TE/JGB-DP/ : 06/01/2016 : 4P/5C

CrI.R.C.(MD).No.578 of 2015
and
MP(MD)No.1 of 2015
15.12.2015