

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30-11-2016

CORAM

THE HONOURABLE DR.JUSTICE P.DEVADASS

Cr1.R.C.No.607 of 2011

and

M.P.No.1 of 2011

D.H.Rajkumar

...Petitioner / A-4

Vs.

Selvamani

..Respondent/Complainant

This Criminal revision is preferred under Section 397 read with Section 401 of Cr.P.C., against the order dated 7.3.2011 made in Cr1.M.P.No.11 of 2010 in S.C. No.225 of 2009 by the learned Principal Assistant Sessions Judge, Salem.

For Petitioner : Mr.J.Franklin

For Respondent : Mr.K.Sridhar for
M/s.K.Sridhar Associates.

O R D E R

A-4 in the Sessions Case in S.C.No.225 of 2009 on the file of the learned Principal Assistant Sessions Judge, Salem, aggrieved by the dismissal of his discharge petition in Cr1.M.P.No.11 of 2010, has directed this revision.

2. The complainant alleged commission of offences under Sections 147, 148, 427, 447, 448 and 307 IPC by A-1 to A-4. The learned Magistrate forwarded the complaint under Section 156(3) Cr.P.C., to the Inspector of Police, Asthampatti Police Station, Salem City. After investigation, police referred the case as mistake of fact, after notice to the complainant, submitted a report to the learned Magistrate.

3. The learned Magistrate issued notice to the complainant. He filed a protest petition. It was treated as a private complaint. The learned Magistrate proceeded accordingly. After conducting enquiry, the learned Magistrate took cognizance

for offences under Sections 147, 148, 427, 447, 448 and 307 IPC.

4. The revision petitioner/A-4 filed CrI.M.P.No.11 of 2010 to discharge him from the case.

5. The grievance of the petitioner/A-4 is that in the facts and circumstances, there is no material to frame a charge under Section 307 IPC.

6. The learned Magistrate coming to the conclusion that as there are more than one offence, there cannot be partial discharge dismissed the petition.

7. The learned counsel for the revision petitioner/A-4 contends that there is no sufficient ground to proceed for an offence under Section 307 IPC. On facts, Section 307 IPC is not attracted.

8. On the other hand, the learned counsel for the respondent/ complainant would contend that the accused came to the scene of occurrence armed with deadly weapons with an intention to do away with the complainant. Of course, the complainant had providentially escaped. That an attempt has been made on his life. Thus there is prima facie case, including for an offence under Section 307 IPC as against all the accused persons.

9. I have anxiously considered the rival submissions, perused the impugned order and the materials available on record.

10. Section 307 IPC = Section 302 IPC less death. For an offence under Section 307 IPC, the ingredients required for an offence under Section 302 IPC must present, however, the complainant should survive. If he does not survive then it will be Section 302 IPC. Incidentally, for an offence under Section 307 IPC 'mens rea' prescribed in Section 299 IPC must be present. For an offence under Section 307 IPC, the seat of the injury, in other words, the injury inflicted on the body of the victim and not the size of the injury is important. The type of weapon used is also important.

11. Now in this case, as per the allegations in the complaint and the evidence let in, on the occurrence day, the revision petitioner and 3 others armed with crow bar, cycle chain, veecharuval criminally intimidated the complainant. Except the intimidatory words, they did not do anything further. No injury was caused to the complainant. But in the facts and circumstances, in such a situation, complainant might have been put to fear. In such circumstances, Section 307 IPC is not

attracted against the petitioner and also against A-1 to A-3. Instead there is a prima facie case for an offence under Section 506 (ii) IPC against the accused, namely, A-1 to A-4. Consequently as there is no offence exclusively triable by a Court of Sessions, a learned Magistrate try the offence under Section 506(ii) IPC.

12. In view of the foregoing, it is ordered as under:-

(i) The impugned order of discharge passed by the learned Assistant Sessions Judge, Salem in CrI.M.P.No.11 of 2010 dated 7.3.2011 is modified;

(ii) Offence under Section 307 IPC is not made out as against the revision petitioner/A-4 and A-1 to A-3;

(iii) Instead an offence under Section 506(ii) IPC arises;

(iv) The learned Principal Assistant Sessions Judge, Salem will send the entire case records to the learned Judicial Magistrate No.III, Salem;

(v) The said Magistrate shall take it as a Calender Case;

(vi) The learned Magistrate shall proceed further in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973.

13. With the above observations, the Criminal Revision is disposed of. Consequently, connected miscellaneous petition is closed.

Svn

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal Asst. Sessions Judge, Salem.
 2. -do- thro The Principal Sessions Judge, Salem.
 3. The Judicial Magistrate No.III, Salem.
 4. -do- thro The Chief Metropolitan Magistrate, Salem.
- + 1 cc to M/s.K.Sridhar Associates, Advocate Sr 72462

KR/28/12

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