

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2016

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.R.C.No.1303 of 2015

and

M.P.Nos.1 & 2 of 2015

R.Lakshmi

W/o.R.Rangasamy

.... Petitioner/Accused No.2

vs

State by:

Deputy Superintendent of Police,
District Crime Branch Police Station,
Thiruvannamalai.

Crime No.2 of 2009

... Respondent/Complainant

Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure, praying to call for the records in Crl.M.P.No.11092 of 2014, in C.C.No.456/2012 and to set aside the order of learned Judicial Magistrate I, Thiruvannamalai District, passed in Crl.M.P.No.11092 of 2014 dated 11.5.2015 and dismissing the petition for discharge filed by the petitioner.

For Petitioner : Mr.N.R.Elango, senior counsel
for Mr.Ganesh Rajan

For Respondent : Mr.C.Iyyapparaj
Government Advocate (Crl.side)

O R D E R

This revision arises against the order of learned Judicial Magistrate I, Thiruvannamalai District, passed in Crl.M.P.No.11092 of 2014 in C.C.No.456 of 2012, on 11.05.2015.

2. The prosecution case is that of the first accused, an employee of Sri Bannari Amman Sugar Ltd., having been entrusted with the job of handling cash on behalf of the company, abused the trust placed in him and misappropriated sums to the tune of Rs.91,78,600/-. Petitioner/A2, wife of first accused, also conspired with him in committing the offence. A case in Crime

No.2 of 2009 on the file of respondent was registered. Upon completion of investigation, a charge sheet stands filed informing commission of offences u/s.468, 471, 477-A, 408 and 420 IPC against first accused and 408 r/w 109, 420 r/w 109 and 414 IPC against second accused. Petitioner/A2 filed Crl.M.P.No.11092 of 2014 in C.C.No.456 of 2012 seeking discharge. The Court below, under orders dated 11.05.2015, dismissed such petition. Hence, this revision.

3. Learned senior counsel for petitioner impressed upon this Court that none of the witnesses examined in the case have spoken to the involvement of this petitioner, who is arrayed as second accused, she being the wife of the first accused. The charge against the first accused is of having committed offences u/s.468, 471, 477-A, 408 and 420 IPC. Petitioner/A2 is sought to be wrongly roped in with the aid of Section 109 IPC in respect of offences u/s.408 and 420 IPC. There absolutely is no material to connect the petitioner with the commission of such offences. Learned senior counsel further contended that the accusation of this petitioner having committed an offence u/s.414 IPC is also ill-founded. It is the prosecution allegation that immediately on the date next to the arrest of the first accused, the petitioner withdrew a sum of Rs.7,77,590/- from her husband's account and Rs.1,31,000/- from her account, totalling a sum of Rs.9,08,590/- as also operated her locker towards removing jewellery from it. The statement of LW-128, Accountant of State Bank of India, Pothanur, informs that the jewelleries indeed were available at the locker.

4. Learned Government Advocate [Crl.side] contended that the petition seeking discharge stands rightly dismissed by the Court below as there is a prima facie case against the petitioner/A2. He also contended that presumption u/s.114 of the Indian Evidence Act would arise against the petitioner.

5. This Court has considered the rival submissions.

6. The first accused as an employee of Sri Bannari Amman Sugar Ltd., has been entrusted with monies for a particular purpose. It is the prosecution case that he has abused such trust and in the process committed offences u/s.408 and 420 IPC. This Court fails to see how this petitioner can be called upon to answer such offences with the aid of Section 109 IPC when none of the witnesses have spoken to any role played by her in the commission of such offences by first accused, her husband. However, as regards the offence u/s.414 IPC, it is the prosecution allegation that after the arrest of her husband/A1, the petitioner sought to do away with the misappropriated monies by withdrawing sums and operating bank lockers. This, in our view, informs a prima facie case for proceeding against the petitioner for offence u/s.414 IPC. It, of course, would be open

to the petitioner to contend in the course of trial that such offence stands not made out against her.

This Criminal Revision is ordered in the following terms:

- (i) Petitioner/A2 shall stand discharged of offences u/s.408 and 420 IPC in proceedings in C.C.No.456 of 2012 on the file of learned Judicial Magistrate I, Thiruvannamalai District.
- (ii) The trial court may proceed against the petitioner insofar as offence u/s. 414 IPC is concerned. This Court, however, makes it clear that whatever is stated herein above is merely for the disposal of this revision and will have no bearing on the merits of the case of either side before the trial Court.
- (iii) Taking into consideration the submission of learned senior counsel for petitioner that the petitioner is a lady and her presence before the Court below may dispensed with, this Court directs the Court below not to insist upon the presence of the petitioner before it on all hearing dates. Of course, it will be open to the Court below to call for the personal presence of petitioner whenever the same absolutely is deemed necessary. Petitioner shall file an affidavit of undertaking before the Court below informing that she will not dispute her identity and that she will be represented by a counsel before the Court below on all hearing dates and that she will appear before the Court below as and when required.

Consequently, connected Miscellaneous Petitions are closed.



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Sub Assistant Registrar

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To

1.The Judicial Magistrate I,
Thiruvannamalai District.

2. -do- Thro'The Chief Judicial Magistrate,
Tiruvannamalai District.

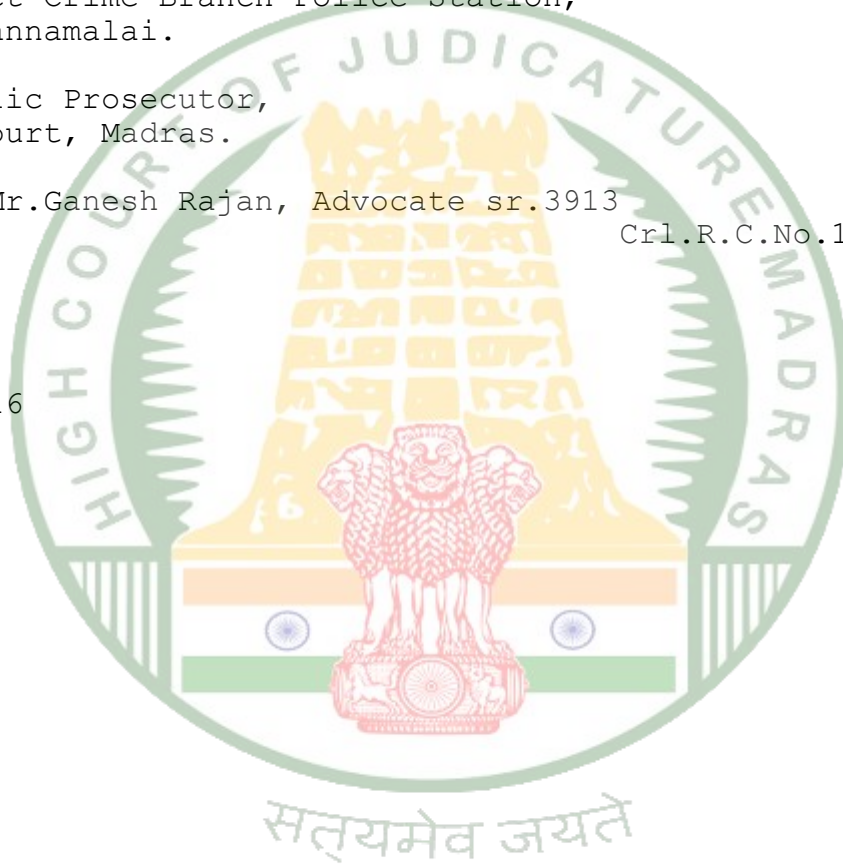
3.The Deputy Superintendent of Police,
District Crime Branch Police Station,
Thiruvannamalai.

4.The Public Prosecutor,
High Court, Madras.

+ 1cc to Mr.Ganesh Rajan, Advocate sr.3913

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PPA (CO)
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