

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2016

CORAM

The Hon'ble Mr. Justice M.Venugopal

Crl.R.C.No.1364 of 2016

and

Crl.M.P.No.12110 of 2016

Mahalingam

...Petitioner/Accused

vs.

State, rep. by,

The Sub Inspector of Police,

Velagoundampatti Circle,

Nallur Police Station,

Crime No.35 of 2014,

Namakkal District.

...Respondent/Complainant

Criminal Revision Petition, filed under Sections 397 read with 401 of the Criminal Procedure Code to call for records pertaining to the order, dated 29.09.2016, made in C.M.P.No.524 of 2015, in C.C.No.109 of 2014, on the file of the Judicial Magistrate Court, Paramathi, and to set aside the same.

For Petitioner : Mr.N.Manoharan

For Respondents: Mr.K.Madhan

Government Advocate (Crl.Side)

O R D E R

The Revision Petitioner/Accused has filed the instant Criminal Revision Petition before this Court, being dissatisfied with the Order/Judgement, dated 29.09.2016, made in C.M.P.No.524 of 2015, in C.C.No.109 of 2014, passed by the learned Judicial Magistrate, Paramathi, Namakkal District.

2. The Learned Judicial Magistrate, Paramathi/trial Court, while passing the impugned Order, dated 29.09.2016, in C.M.P.No.524 of 2015, in C.C.No.109 of 2014, at Para No.6, had among other things observed that, "this Court opines that the offence committed by the Petitioner/Accused, viz., 'Breach of Trust', comes under the single act/proceedings and furthermore, in the present case, 'Final Report' was filed, and the case was taken on file, and as such, the relief sought for by the Petitioner/Accused could only be determined at the time of

conclusion of enquiry/trial of the case, etc., and resultantly, dismissed the Petition.

3. Challenging the propriety, legality and the validity of the impugned Order, dated 29.09.2016, made in C.M.P.No.524 of 2015, in C.C.No.109 of 2014, passed by the trial Court, the Learned Counsel for the Revision Petitioner/Accused contends that the impugned Order of Dismissal passed by the trial Court is clearly an arbitrary one, and also, against the settled Legal Principles of Law.

4. Advancing his arguments, the Learned Counsel for the Revision Petitioner/Accused proceeds to take a plea that the trial Court's impugned Order in C.M.P.No.524 of 2015, dated 29.09.2016, is a cryptic one, and in short, it is devoid of detailed reasons. Therefore, for want of a 'Speaking Order', the impugned Order, dated 29.09.2016, in C.M.P.No.524 of 2015, in C.C.No.109 of 2014, is liable to be set aside by this Court, in furtherance of Substantial Cause of Justice.

5. Expatiating his contention, the Learned Counsel appearing for the Revision Petitioner/Accused takes a core stand that the Complaint in the present case was given after a long lapse of 3 1/2 years, and therefore, it is clearly 'Barred by Limitation'.

6. Besides the above, it is the contention of the Learned Counsel that the Respondent/Prosecution had deliberately altered the penal provision to Section 409 of the Indian Penal Code (hereinafter, referred to as 'IPC'), instead of Section 406.

7. The Learned Counsel vehemently contends that the Revision Petitioner/Accused had not committed any offence, as alleged by the Respondent/Prosecution, but yet, he was arrayed as an Accused for no valid reasons. Moreover, the trial Court had posted the case for trial on 24.11.2016, for framing of charges.

8. While rounding up his submission, the Learned Counsel appearing for the Revision Petitioner/Accused takes a plea that the dismissal of C.M.P.No.524 of 2015, in C.C.No.109 of 2014, by the trial Court, through its Order, dated 29.09.2016, is clearly against the well laid down dictum of the Hon'ble Supreme Court, in the decision of (Central Bureau of Investigation Vs. K.Narayana Rao) reported in (2012) 9 S.C.C. 512 (at special page 521 and 522 and 523), whereby and whereunder, at Para Nos.14 to 15, it is observed as follows:-

"14. While considering the very same provisions i.e., framing of charges and discharge of accused, again in Sajjan Kumar (supra), this Court held thus:-

"19. It is clear that at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce proves the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

20. A Magistrate enquiring into a case under [Section 209 CrPC](#) is not to act as a mere post office and has to come to a conclusion whether the case before him is fit for commitment of the accused to the Court of Session. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. If there is no prima facie evidence or the evidence is totally unworthy of credit, it is the duty of the Magistrate to discharge the accused, on the other hand, if there is some evidence on which the conviction may reasonably be based, he must commit the case. It is also clear that in exercising jurisdiction under [Section 227 CrPC](#), the Magistrate should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

Exercise of jurisdiction under [Sections 227 and 228 CrPC](#).

21. On consideration of the authorities about the scope of [Sections 227 and 228](#) of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under [Section 227 CrPC](#) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting

the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

15. From the above decisions, it is clear that at the initial stage, if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, in that event, it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. A judicial magistrate enquiring into a case under [Section 209](#) of the Code is not to act as a mere post office and has to arrive at a conclusion whether the case before him is fit for commitment of the accused to the Court of Session. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. On the other hand, if the Magistrate finds that there is no prima facie evidence or the evidence placed is totally unworthy of credit, it is his duty to discharge the accused at once. It is also settled law that while exercising jurisdiction under [Section 227](#) of the Code, the Magistrate should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. This provision was introduced in [the Code](#) to avoid wastage of public time and to save the accused from unavoidable harassment and expenditure. While analyzing the role of the respondent herein (A-6) from the charge sheet and the materials supplied along with it, the above principles have to be kept in mind.""

9. The crux of the contention put forth on behalf of the Revision Petitioner/Accused is that the trial Court is not to act as a 'mere Post Office', and it has to arrive at an independent conclusion after applying its judicial mind, and, in the instant case, the same is absent. On that score, the impugned Order passed by the trial Court in C.M.P.No.524 of 2015, in C.C.No.109 of 2014, dated 29.09.2016 is liable to be set aside by this Court, sitting in Revision.

10. Conversely, it is the submission of the Learned Government Advocate (Crl.Side) for the Respondent/Prosecution that the Revision Petitioner/Accused is charged in respect of an offence under Section 409 IPC, and in fact, the Revision Petitioner/Accused was compulsorily retired from service pursuant to the Departmental Proceedings initiated against him by his Department. Furthermore, the Prosecution has, based on ample and strong evidence, established the 'Criminal Breach of Trust' committed by the public servant and only after a thorough investigation, a Charge-Sheet was laid down by the Police and as such, at this stage, the pros and cons of the materials available against the Revision Petitioner/Accused cannot be weighed with 'Golden Scales'.

11. In effect, the plea of the Learned Government Advocate (Crl.Side) for the Respondent/Prosecution is that, the trial Court had rightly dismissed the 'Petition for Discharge' in C.M.P.No.524 of 2015, by an Order, dated 29.09.2016, by assigning a reason that the relief sought for by the Petitioner/Accused can be determined only at the time of conclusion of enquiry/trial etc., of the case, and as such, the Criminal Revision Petition filed by the Revision Petitioner/Accused is liable to be dismissed by this Court.

12. This Court has heard the Learned Counsel appearing for the Revision Petitioner/Accused, and the Learned Government Advocate (Crl.Side) for the Respondent/Prosecution, and noticed their contentions.

13. It is to be noted that the Revision Petitioner/Accused, in his Memorandum of Grounds of Revision has specifically averred at Sub Para f) that, 'a mere reading of the statements recorded under Section 161 of the Criminal Procedure Code (in short, 'Cr.P.C.'), would expose and exemplify the fact that there is no legal evidence, or incriminating materials available on record to sustain the prosecution under Section 409 IPC.'

14. The averred plea of the Revision Petitioner/Accused to the effect that the Complaint was given after a lapse of 3 1/2 years, since the occurrence took place on 16.11.2010, and that the Complaint was given on 28.11.2014, and these aspects would

unerringly point out to the mala fide part of the Respondent/Prosecuting Agency and on this aspect, this Court is of the considered view that the period of limitation enunciated in Section 468 Cr.P.C. pertains to an Offender begins/starts from the date of commission of offence. The limitation prescribed under Cr.P.C. is only for filing of Complaint or initiation of Prosecution and not for taking cognizance of the offence.

15. It is a common knowledge that the cognizance of the offence cannot be taken by a Court of Law, after the period of 'Limitation', commencing from the date of knowledge. In fact, Section 470 Cr.P.C., speaks of 'Exclusion of time in certain cases'. An offence under Section 406 IPC is a continuous one. Undoubtedly, whether the case is beyond the period of limitation or otherwise is a mixed question of Fact and Law. A continuing offence, viz., last act thereof, within the period of limitation need be alleged in the indictment or information is one, which may consist of separate acts or a Code of Conduct, which arises from the singleness of thought, purpose or action, which may be deemed a single offence. In respect of a continuous crime, it means one consisting of a continuous series of acts, which endures after the period of consummation of such an offence of carrying on sealed weapons. A continuing offence is one, which is susceptible to of continuance and is distinguishable from one, which is committed once and for all, in case the offence continues till the date of filing of the Complaint, as per the decision in the case of (Dinesh Supari Traders Vs. A.P.M. (Regulations) Committee) reported in [(2006) C.R.L.J.) Page 255 (Special Page 259)].

16. Insofar as the Departmental Proceedings initiated against the Revision Petitioner/Accused is concerned, the same reportedly ended in compulsory retirement, and at this stage, this Court very significantly points out that initiation of Departmental Proceedings as per the Rules and Regulations of the Department is a different and distinct one from that of initiation of the Criminal Proceedings, and if both is resorted to by the Authority concerned, then, there can be no plea of 'Double Jeopardy', as per Art.20 of the Constitution of India.

17. It is the story of the Prosecution that one K.Gunasekaran, was having a Saving Bank Account No.254848 in the Branch Post Office, Nadanthai, Namakal District, and he purportedly handed over a sum of Rs.7,627/- to the Revision Petitioner/Accused, who was the Branch Post Master, and the said amount was utilized by him for his own purpose on 16.11.2010. Furthermore, it comes to be known that the Revision Petitioner/Accused had deposited the aforesaid amount on 20.11.2010, (At this stage, it is represented on behalf of the Revision Petitioner/Accused that after four years, the Postal Inspector lodged a Complaint on 28.01.2014, registered as Crime

No.35 of 2014 and after completion of investigation, the Respondent/Police had filed the Final Report).

18. It is not in dispute that the Revision Petitioner/Accused had entered his appearance, received copies and later, filed C.M.P.No.524 of 2015, seeking 'Discharge' under Section 239 Cr.P.C. At the time of dealing with the 'Petition for Discharge' filed by the Person/Accused, a Court of Law should not adopt an approach of detailed meticulous/threadbare evaluation of the materials available on records as regards the plausible defences projected. The exercise of weighing materials in 'Golden Scales' is not to be envisaged at this juncture by a 'Court of Law', and the same has to be deferred for consideration at subsequent point of time/date. What the Court concerned has to indulge in rumination is that, whether the 'Charge' levelled against the Revision Petitioner/Accused is a 'Groundless' or otherwise. A Court of Law can decide an issue in this regard after considering the Police Report, Documents sent along with it, in terms of the ingredients of Section 173 Cr.P.C. Furthermore, if the examination of Revision Petitioner/Accused is necessary, the same can be done. While framing charges, the Learned Magistrate is expected to apply his mind to the facts of the case, keeping in view of the essential features of the offence, for which, the Accused is sought to be punished.

19. In short, this Court aptly points out that the acid test for determining whether the charges should be considered as 'Groundless' is that, whether the materials are such that does not disclose any grave suspicion against the accused. To put it differently, there must be a foundation or cementing platform, a foundation base in a criminal case for charging a person/Accused and even a very strong suspicion simmering on the mind of the Court concerned, is just enough for framing the charge. If there is prima facie materials to frame charge against an Accused, by no stretch of imagination, it can be said to be 'Groundless'. In short, an Accused cannot be 'Discharged' from the case under Section 239 Cr.P.C.

20. Moreover, if there is a strong suspicion against the Accused, which enable the Court to think that there is a ground for presuming that the Revision Petitioner/Accused has committed an offence, then, it is not open to a Court of Law to say that there is no sufficient ground for proceeding against the accused.

21. Apart from the above, although, the trial Court at Para No.6 of the impugned Order in C.M.P.No.524 of 2015 had observed among other things that the act of criminal Breach of Trust comes under single act in its opinion, and also, when the Final Report was filed, the relief sought for by the

Petitioner/Accused could be only determined finally at the time of conclusion of enquiry/trial of the case etc., although, the same is purported to be not a criminal case from the point of view of the Revision Petitioner/Accused, the same is not like that in the considered view of this Court.

22. In the upshot of the detailed discussions, and in view of the foregoings, this Court comes to an inescapable conclusion that the Dismissal Order passed by the trial Court, in C.M.P.No.524 of 2015, in C.C.No.109 of 2014, dated 29.09.2016, is free from any flaw. Consequently, the Criminal Revision Petition fails.

23. In fine, the Criminal Revision Petition is dismissed. The impugned Order, dated 29.09.2016, in C.M.P.No.524 of 2015, in C.C.No.109 of 2014, passed by the learned Judicial Magistrate, Paramathi, Namakkal District, is confirmed by this Court for the reasons assigned in this Revision. It is made quite clear that the dismissal of the Criminal Revision Petition will not preclude the the Revision Petitioner/Accused to raise all factual and legal pleas before the trial Court in the main case in C.C.No.109 of 2014, at the appropriate time/stage and to seek redressal of his grievances, of course, in the manner known to Law and in accordance with Law. It is needless for this Court to point out that the trial Court shall take into account of the same and pass a final Order/Judgment in C.C.No.109 of 2014, as expeditiously as possible, considering the fact that the date of the crime/offence was 16.11.2010, and nearly six years had gone by. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS V)

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Sub Asst. Registrar

To

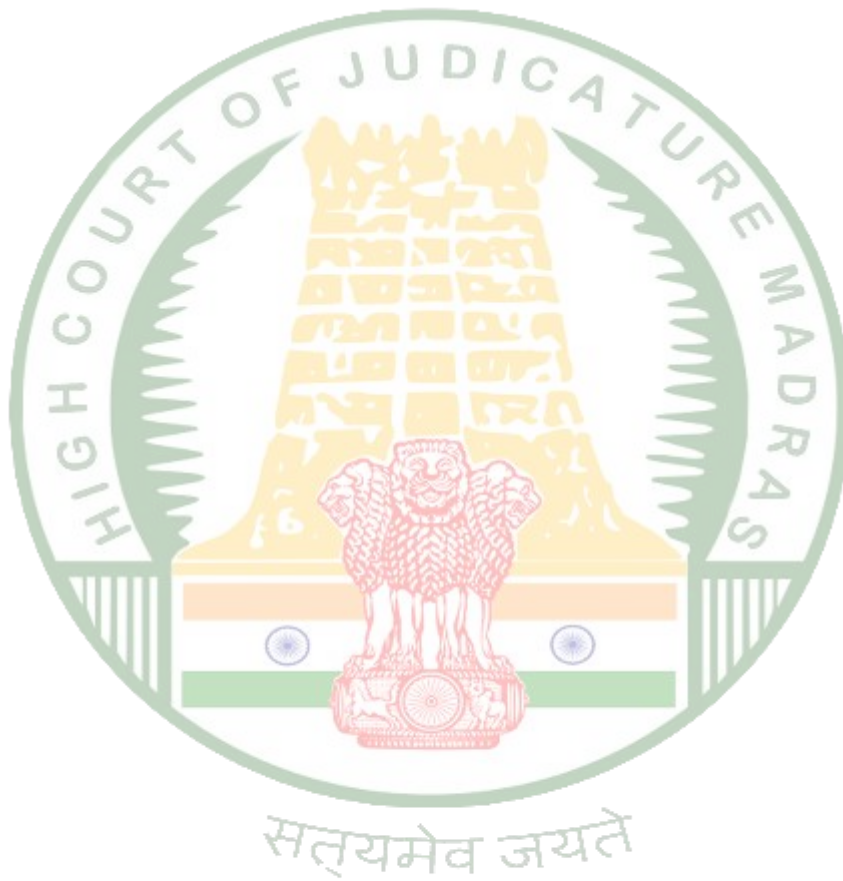
1. The Judicial Magistrate Court,
Paramathi, Namakkal District.
2. The Sub Inspector of Police,
Velagoundampatti Circle,
Nallur Police Station,
Crime No.35 of 2014,
Namakkal District.

3 The Public Prosecutor,
High Court, Madras.

+1 cc to M/s.N.Manohakaran,advocate,sr.66107.

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