

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders Reserved on : 20.06.2016)

DATED : 25.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.No.692 of 2016

and

Crl.M.P.No.4949 of 2016

1.S.Nalliappan
2.G.Nagarajan
3.R.Velappan
4.V.Arul alias Dinesh ... Petitioners/Accused 1 to 4

Vs.

State represented by
Inspector of Police,
Namagiripettai Police Station,
Crime No.528 of 2012. ... Respondent/Complainant

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 of the Code of Criminal Procedure, to set aside the order passed by the learned Judicial Magistrate, Rasipuram, in C.M.P.No.1927 of 2015 in C.C.No.11 of 2015, dated 19.02.2016 by allowing the revision.

For Petitioners : Mr.K.S.Rajagopalan, Senior Counsel
for Mr.P.Ezhil Nilavan

For Respondent : Mr.M.Mohamed Riyaz,
Government Advocate (Crl.Side)

ORDER

This Criminal Revision Case is directed against the order dated 19.02.2016 passed by the learned Judicial Magistrate, Rasipuram, in C.M.P.No.1927 of 2015 in C.C.No.11 of 2015, dismissing the discharge petition filed by the revision petitioners/A.1 to A.4.

2. The learned Senior Counsel appearing for the revision petitioners would mainly contend that there are no incriminating materials available to frame charges against the revision petitioners/A.1 to A.4. It is further contended that the learned Magistrate has failed to note that the accused have not committed any offence, since the prosecution also accepted the document executed in the presence of Deputy Superintendent of Police on 22.05.2011 and the said document is a vital document. It is also contended that the finding in

the document is that the first accused sold his 88 machines which are condemned. The remaining 20 machines belonging to the first accused have to be separated by the de facto complainant and he run the company with his own machines and the said finding was accepted by both the parties and also signed in the presence of Deputy Superintendent of Police. Therefore, there is no question of alleged theft by the accused and no charge can be framed against the accused. The learned Senior Counsel appearing for the revision petitioners further contended that the learned Magistrate has failed to accept the fact that the first accused refused to return Rs.3,00,000/- advance to the de facto complainant for the reason that the de facto complainant damaged 88 machines of the first accused. Further, the learned Magistrate had failed to appreciate the fact that the de facto complainant shifted his business from Namagiripettai to Omalur on 20.09.2011. In view of this, since there is no satisfactory evidence available on the side of the prosecution to frame charges against the accused, the learned Senior Counsel prayed that the revision petitioners/accused 1 to 4 have to be discharged from the charges and the order of the learned Magistrate has to be set aside and the criminal revision case has to be allowed.

3. In support of his contentions, the learned Senior Counsel appearing for the petitioners has relied on the following decisions of the Hon'ble Apex Court:-

- (i) (2006) 2 Supreme Court Cases (Cri) 430 (Murari Lal Gupta Vs. Gopi Singh)
- (ii) 2014 (4) Crimes 305 (SC) (Binod Kumar & Ors. Vs. State of Bihar & Another)
- (iii) (2010) 2 Supreme Court Cases (Cri) 223 (Dalip Kaur and others Vs. Jagnar Singh and another)

4. The learned Government Advocate (Crl.Side) would contend that the trial Court, after considering the entire facts and circumstances of the case, correctly passed order and there is no infirmity or illegality in the order passed by the trial Court and hence, he prayed that the Criminal Revision Case has to be dismissed.

5. This Court has considered the arguments made on either side and perused the entire records produced on either side.

6. In this case, the question as to whether the document executed between the parties is true or false cannot be decided at the time of framing of charge and it has to be decided only at the time of final disposal alone. Further, this Court cannot decide the velacity and genuinity of the document at this stage. The Hon'ble Supreme Court of India in the case of Rukmini Narvekar v. Vijaya Satardekar & others, reported in [(2008) 14 SCC 1], at para Nos.22 and 23, has held as follows:-

"22. In our opinion, therefore, it cannot be said as an absolute proposition that

under no circumstances can the court look into the material produced by the defence at the time of framing of the charges, though this should be done in very rare cases i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted.

23. We agree with Shri Lalit that in some very rare cases the court is justified in looking into the material produced by the defence at the time of framing of the charges, if such material convincingly establishes that the whole prosecution version is totally absurd, preposterous or concocted. . . ."

7. As per the above citation, if any documents produced on the side of the defence at the time of framing of charges and if it is conclusively proved, the prosecution version is totally concocted. But, in this case, no such documents were produced on the side of the accused/revision petitioners to disprove the case of the prosecution in whole.

8. In view of the above facts and circumstances of the case, since the stage of the case is framing of charges, the Court has to look into the statements recorded by the prosecution. On a reading of the entire documents, it is seen that there are sufficient incriminating materials available against the accused to frame charges. The question as to whether the statements recorded by the prosecution and whether the documents produced by the prosecution are genuine or not has to be decided only at the time of trial alone and it is not a proper stage to decide the genuineness of the document. Further, the citations relied on by the learned Senior Counsel appearing for the petitioners is not applicable to the facts of the present case. The trial Court, after perusing the entire documents, came to a correct conclusion that there are incriminating materials available to frame charges against the revision petitioners/Accused 1 to 4. Hence, this Court is of the considered view that there is no infirmity or illegality in the order passed by the trial Court. This Court finds no reason to interfere with the order passed by the learned Magistrate which does not warrant any interference by this Court and hence, the criminal revision case is liable to be dismissed.

9. In the result, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Jrl

To

1. The Judicial Magistrate,
Rasipuram.
2. The Inspector of Police,
Namagiripettai Police Station.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.Ezhilnilavan, Advocate, S.R.No.61208

Cr1.R.C.No.692 of 2016

NM(CO)
CA(09/12/2016)



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