

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.OP No.21183 of 2016
and
Cr1.MP.No.9807 of 2016

1.S.Shriram
2.Sridhar

... Petitioners

Vs

The State by Inspector of Police,
Punjai Pulliyampatti Police Station,
Punjai Pulliyampatti,
Crime No.283/2007.
Sathyamangalam Taluk.

... Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to direct the learned Trial Court to pass orders in CMP.No.1026 of 2016 in C.C.No.39 of 2009 on the file of the Judicial Magistrate, Sathyamangalam.

For Petitioner : Mr.D.R.Arun Kumar

For Respondent : Mr.C.Emalias
Additional Public Prosecutor

O R D E R

This criminal original petition has been filed seeking a direction to the trial Court to pass orders in CMP.No.1026 of 2016 in C.C.No.39 of 2009.

2. It is seen that the petitioners are facing trial in C.C.No.39 of 2009 before the Judicial Magistrate, Sathyamangalam for offences under Sections 467, 468, 471, 419, 420 r/w 114 IPC.

3. It is the case of the prosecution that one S.Parimalam was holding deposit of a sum of Rs.41,867/- in the Indian Overseas Bank, Puliyampatti Branch. A1 to A4, in collusion with the petitioners, had encashed the deposit amount, by setting up an impersonator (Deepa A2) for Parimalam.

4. The learned counsel appearing for the petitioners submitted that the petitioners have been promoted and they are

working as Senior Managers in the bank and that, they have filed a discharge petition under Section 239 Cr.P.C. in CMP.No.1026 of 2016, which is still pending. Hence, they have come up before this Court with this petition for a direction to the trial Court to complete the enquiry in CMP No.1026 of 2016 in C.C.No.39 of 2009.

5. The learned Additional Public Prosecutor submitted that Jaganathan (A1) is absconding and therefore, the trial has not proceeded further.

6.This Court gave its anxious consideration to the rival submission.

7. Section 239 Cr.P.C. reads as follows.

"239. When accused shall be discharged -

If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."

8.It is common knowledge that when there are more than two accused, one after the other will file an application under Section 239 Cr.P.C. for prolonging the trial. This practice has been deprecated by this Court on several occasions. Under Section 239 Cr.P.C., it is not even necessary for any accused to file a formal application. When the accused appear before the Court, after satisfying that the accused have engaged an advocate, it is the duty of the trial Court to hear the public prosecutor and the accused and take a decision as to the framing of charge.

9. In this case, A1 is said to be absconding and the learned Additional Public prosecutor, on instructions, submitted that the police will execute the warrant and apprehend A1 soon. Admittedly, the petitioners are not working at Sathyamangalam and they are employed elsewhere and therefore, it is naturally difficult for them to come every time for trial.

10. Taking into consideration of all the aspects, this Court directs of the petitioners to furnish a bond for Rs.10,000/- each with two sureties, under Section 88 Cr.P.C to the satisfaction of the Judicial Magistrate, Sathyamangalam in C.C.No.39 of 2009 within a period of two weeks from the date of receipt of a copy of this order. The petitioners are

directed to be present for receiving the complaint, for answering the charge, at the time of questioning under Section 313 Cr.P.C. and at the time of passing judgment. The petitioners shall file affidavit of undertaking, before the trial Court that they will not dispute their identity and that their counsel will cross-examine the prosecution witnesses on the day they are examined in-chief and that they will not adopt dilatory tactics. On such undertaking, the trial Court shall dispense with the personal appearance of the petitioners. If the petitioners adopt any dilatory tactics, the trial Court can insist on their presence. The learned counsel shall file an application under Section 317 Cr.P.C, until A1 is secured. After A1 is secured, the trial Court shall ensure that the procedure laid under Section 239 Cr.P.C. is followed by hearing the prosecution and if the Magistrate considers the charge against any of the accused to be groundless, he shall discharge the accused and record the reasons. For doing, all these exercises, he need not have to get fresh petitions from the accused under Section 239 Cr.P.C.

With the above directions, the criminal original petition is closed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sms
To

1. The Judicial Magistrate,
Sathyamangalam.
2. Do Through The Chief Judicial Magistrate,
Erode.
3. The Inspector of Police,
Punjai Pulliyampatti Police Station,
Punjai Pulliyampatti,
Crime No.283/2007.
Sathyamangalam Taluk.
4. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.Arun Kumar, Advocate, S.R.No.53062

Cr1.OP No.21183 of 2016
and
Cr1.MP.No.9807 of 2016