

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2016

CORAM:

THE HON'BLE DR.JUSTICE P.DEVADASS
Crl.O.P. No.6494 of 2016
and
Crl.R.C.No.132 of 2016
and Crl.M.P.No.896 of 2016

In Crl.O.P.No.6494/2016

K.Ravi ... Petitioner/De facto complainant

Vs.

State rep. by
The Inspector of Police,
Crime Branch C.I.D.,
Dharmapuri Town Police Station,
Crime No.2074 of 2009
Dharmapuri District. ... Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to direct the learned Principal Sessions Judge, Dharmapuri, to dispose of the S.C.No.90 of 2015 as expeditiously as possible within a stipulated time by appreciating the above said facts and circumstances.

For Petitioner : Mr.A.Thiyagarajan
For Respondent : Mr.P.Govindarajan,
Addl. Public Prosecutor

In Crl.R.C.No.132 of 2016 :

N.Madhu .. Petitioner/A-18

Vs.

State rep. by
The Inspector of Police,
Crime Branch C.I.D.,
Dharmapuri Town Police Station,
Crime No.2074 of 2009
Salem District. .. Respondent/Complainant

Prayer:- Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure, to set aside the dismissal of the discharge petition by the learned Principal Sessions Judge, Dharmapuri, made in CrI.M.P.No.2405 of 2015, dated 20.01.2016 in S.C.No.90 of 2015.

For Petitioner : Mr.R.John Sathyan
For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor
For Intervenor : Mr.A.Thiyagarajan

COMMON ORDER

As the factual matrix is intermixed in both the petitions, they were mixed together, heard together and are being disposed of together today.

2. In CrI.O.P.No.6494 of 2016, the de facto complainant in Crime No.2074 of 2009 registered by Dharmapuri Town Police, seeks direction to the learned Principal Sessions Judge, Dharmapuri, to expeditiously conduct the trial of the Sessions Case in S.C.No.90 of 2015.

3. In CrI.R.C.No.132 of 2016, A-18 in the said case canvasses the correctness of the dismissal of his discharge petition in CrI.M.P.No.2405 of 2015 by the said Court.

4. Both the petitions relate to one Veeramani's murder that took place on 24.11.2009, in Dharmapuri Town. As many as 31 persons were accused of killing him. One of them is A-18.

5. The learned committal Magistrate took cognizance on the Final Report filed by the police. Committed the case to the Court of Sessions, Dharmapuri. The accused are now being tried in the said Court in S.C.No.90 of 2015.

6. A-18 sought for his discharge from the case on the ground that he has been implicated in this case without any incriminating materials and on the alleged date of occurrence, he was not present at the killing field, he was 'elsewhere' (alibi).

7. Prosecution countered his plea.

8. Perusing to the materials collected and presented by the Investigation Officer, through his (final) report under Section 173 Cr.P.C., and hearing both sides, the trial Court concluded that there is ground to proceed further as against A-18 for offences under Section 120-B r/w certain specific IPC

offences, Sections 148, 149 r/w 302, Section 307 r/w 149 and 324 IPC. Thus, refused to discharge him from the case.

9. However, the trial Court, instead of charging him accordingly (See Section 228(1) Cr.P.C.) and recording his plea (See Section 228(2) Cr.P.C.) adjourning the case from time to time.

10. At this juncture, the de facto complainant filed CrI.O.P.No.6494 of 2016 for a direction for the expeditious disposal of the said case.

11. According to the learned counsel for the revision petitioner/A-18, the de facto complainant/informant has not named A-18 in the F.I.R. Even in his statement under Section 161 Cr.P.C., he did not do so. However, only subsequently through police statements stated to have been obtained from some witnesses, he has been implicated in this case. As against him, it is a put up case.

12. The learned Additional Public Prosecutor would submit that the presence of A-18 when the unlawful pact to eliminate the deceased was hatched has been spoken to Witness Nos.24 and 25. Further, at the killing spot, the presence of A-18 armed with the deadly weapon also has been spoken to by witness Nos.12 and 13 in their police statements. Thus, there are incriminating materials to link A-18 for conspiracy, his being a member of unlawful assembly, so he is also vicariously liable for the consequences ensued from the overt act committed by the said unlawful assembly.

13. The learned counsel for the de facto complainant/Intervenor reiterated the said submissions of the learned Additional Public Prosecutor. He would also submit that the de facto complainant is very much interested in the quick disposal of the case.

14. I have anxiously considered the submissions of the learned counsels, perused the impugned order, dated 20.01.2016, averments in the petition and the counter filed by the Investigation Officer/Inspector, C.B.C.I.D., Dharmapuri and the relevant materials on record.

15. Relating to the murder of one Veeramani, a criminal case for certain cognizable offences has been registered by the Dharmapuri Town police. The Investigation Officer collected the evidence and submitted his (final) report to the committal Court together with materials mentioning about the role of each accused and the offences they appears to have committed. Specific role has been assigned to A-18 viz., co-conspirator, member of unlawful assembly which had committed

murder, attempted on the lives of two persons and also assaulted certain persons.

16. So far as A-18 is concerned, the specific allegations are that he appears to have committed offences under Section 120-B r/w certain specific IPC offences, 148, 149 r/w. 302 IPC, 307 r/w. 149 (two counts) and 324 r/w 149 (two counts) I.P.C.

17. The entire prosecution package is before the Sessions Court. The Court has to consider the Final Report, the materials annexed to that and upon hearing both, if the Court sees prima facie case against the accused accordingly it shall frame charge in writing and record his plea, otherwise, it shall discharge the accused from the case.

18. It must consider whether there is any prima facie case as against the accused. At this stage, the trial Court shall consider the materials presented by the prosecution consisting of the Final report, statements recorded under Section 161 Cr.P.C. and documents, if any, as such without embarking upon any analytical work on the said materials or considering their weight or merit.

19. It is profitable here to notice Sections 227 - 228 Cr.P.C., which runs as under:

"227. Discharge.

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

228. Framing of charge.

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) Is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) Is exclusively triable by the court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

20. In Section 239-240 Cr.P.C. relating to framing of charge in a police case on a warrant procedure, the word employed is that there is ground for presuming that the accused has committed the offence, in Section 245-246 Cr.P.C. relating to the framing of charge in a (private) complaint case involving a warrant procedure, the word employed is if unrebutted it would warrant a conviction and in Section 227-228 Cr.P.C. relating to Sessions cases, the word employed is 'there is ground for presuming that the accused has committed the offence'. Though the word 'prima facie' has not been employed in Sections 239-240, 245-246, 227-228 Cr.P.C., the Code means to convey the same, namely, existence of a prima facie case as against the accused.

21. The benefit of doubt always goes in favour of the accused. But it is not all doubts, it is only 'reasonable doubts'. But at only one stage of a criminal case benefit of doubt goes in favour of the prosecution i.e., the stage of Sections 239-240, 245-246, 227-228 Cr.P.C. Even a suspicion drawn on incriminating materials is enough to frame a charge against the accused. At this stage, this Court can have the impression that he 'might have' committed the offence. But there must be materials to entertain such an impression. At this stage, probative value of the materials cannot be tested.

22. The Court has to see is there any prima facie case as against the petitioner/A-18.

23. Now, in this case, Witness No.24 (Palani) and Witness No.25 (Munusamy) speaks about the presence of A-18 when the conspiracy was hatched in the Rice Mill of A-1 situate in Dharmapuri Town. In the occurrence, one Veeramani was brutally murdered. Witness No.12 (Madankumar) and Witness No.13 (Athiyaman) speaks about the presence of A-18 armed with deadly weapon at the scene of crime. Thus, there is prima facie case as against the petitioner.

24. Thus, the order of dismissal of discharge petition passed by the trial Court does not suffer from any legality or propriety.

25. It is brought to my notice that in criminal cases filing of draft charges is being insisted upon by the trial Courts.

26. The Code of Criminal Procedure, 1973 has devised a scheme of trial of Criminal Cases. The trial of Sessions Cases is being dealt with in Chapter XVIII of the Code. Its Section 227-228 deals with framing of charges. Chapter XIX of the Code in part-A in Section 239-240 deals with framing of charges in cases triable on a warrant procedure instituted upon a police report. Its Part-B in Section 245-246 deals with framing of charges in private complaint cases on warrant procedure.

27. Chapter XVII of the Code commencing from Section 211 to 223 deals with the content of the charge and matters connected thereto. If the charges are properly framed, there will be no occasion to invoke Section 216 Cr.P.C.

28. Framing of charges in a criminal trial is a judicial function. It is to be performed by the Court. If one look at the phraseology employed in Sections 239-240, 227-228, 245-246 Cr.P.C, the guidance is provided in the Section itself. Further, reasonable opportunity should be provided to both sides before framing the charges. Thus, hearing before framing charges is contemplated. Even if the defence has not filed any discharge petition, before framing the charges the Trial Court is bound to hear both sides. The hearing contemplated in the said Section enables the Court to get assistance from both sides.

29. I have not heard of a defence counsel filing a draft charge. No defence counsel will come forward to do so. However, there is no harm in the prosecution indicating the charges to be framed. But, it cannot be a draft charge, it should not be a draft charge.

30. Framing of charges is primarily a judicial function. The guidance is clearly available in Section 211 Cr.P.C. Further, if one sees the Commentaries on the Indian Penal Code by Ratanlal and Dhirajlal or certain other books, each Penal Section contains a model charge. It can be used as a guidance.

31. Asking a Public Prosecutor to file draft charge is like asking the counsels in a civil case to file draft issues. A Court should not ask it. It cannot delegate its judicial function to them. The benefit of a Court itself framing

the charges or learned a Civil Judge himself framing the issues is that the Court will get grip of the case/ matter. The Court will get educated. The Court will put both the Prosecutor and the defence counsel on the right path. The Court's attention would be focussed on the work to be done. Therefore, getting a draft charge from the Public Prosecutor and the Court vetting it is not a practice authorised by law. It will be against the spirit of Criminal law to direct the defence counsel to file a draft charge because he is constitutionally (See Article 22(1), Constitution of India) bound to defend the accused and not offend him.

32. Further, if one sees Sections 227-228, 239-240, 245-246 Cr.P.C, if the Court comes to a conclusion that the case put up as against the accused is groundless, if unrebutted, it would not warrant a conviction, there is no sufficient material to frame a charge, to put it simply, there is no prima facie case as against the accused, the Court has to discharge the accused. But, if it is otherwise, there is ground to proceed further, after disposing of the discharge petition, the Court must frame a charge in writing, read over to him, explain to him and record his plea. When there is no legal impediment or stay order from superior Courts, the Court cannot postpone framing of charges and recording the plea of the accused.

33. The de facto complainant wants expeditious disposal of the case. 'Right to speedy trial' and 'Right to speedy justice' has been now interpreted to include in Article 21, Constitution of India. It has become his Fundamental Right. The corresponding obligation is primarily fixed on the Court. It is also on the other stakeholders namely, prosecution side and defence side.

34. The said right is not one way. Equally, the victim is also entitled to have similar right. The victim, de facto complainant is entitled to know the result of the case given by him. So also, the de jure complainant/police/prosecution. The quick disposal of a Criminal case has the twin benefit of a guilty being punished or appropriately dealt quickly and an innocent is freed quickly.

35. In view of the foregoing, ordered as under:-

(i) The learned Principal Sessions Judge, Dharmapuri is directed to expeditiously dispose of the Sessions Case in S.C.No.90 of 2015, preferably within four months from the date of receipt of a copy of this order.

(ii) The trial Court after giving reasonable opportunity to the learned Public Prosecutor and the learned defence counsel shall fix the date for production of witnesses in a phased manner.

(iii) The Superintendent of Police, Dharmapuri District, shall ensure due production of prosecution witnesses before the trial Court on the appointed date.

(iv) Both the learned Public Prosecutor and the learned defence counsel will give their fullest co-operation to the trial Court to complete this time-bound case in time.

(v) It is made clear that the learned trial Judge, uninfluenced by observations made in this order, will dispose of the case on merits in accordance with law.

36. Accordingly, the Criminal R.C.No.132 of 2016 and the CrI.O.P.No.6494 of 2016 are disposed of. The connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CSVII)

True Copy

Sub-Assistant Registrar

To

1. The Principal Sessions Judge,
Dharmapuri.
2. The Additional Public Prosecutor,
High Court,
Madras.
3. The Public Prosecutor,
Principal Sessions Court,
Dharmapuri.
4. The Superintendent of Police,
Dharmapuri.
5. The Inspector of Police,
Crime Branch C.I.D.,
Dharmapuri Town Police Station,
Dharmapuri District.

6.The Section Officer
F section
High Court Madras

7.The Court Manager High Court,
Madras

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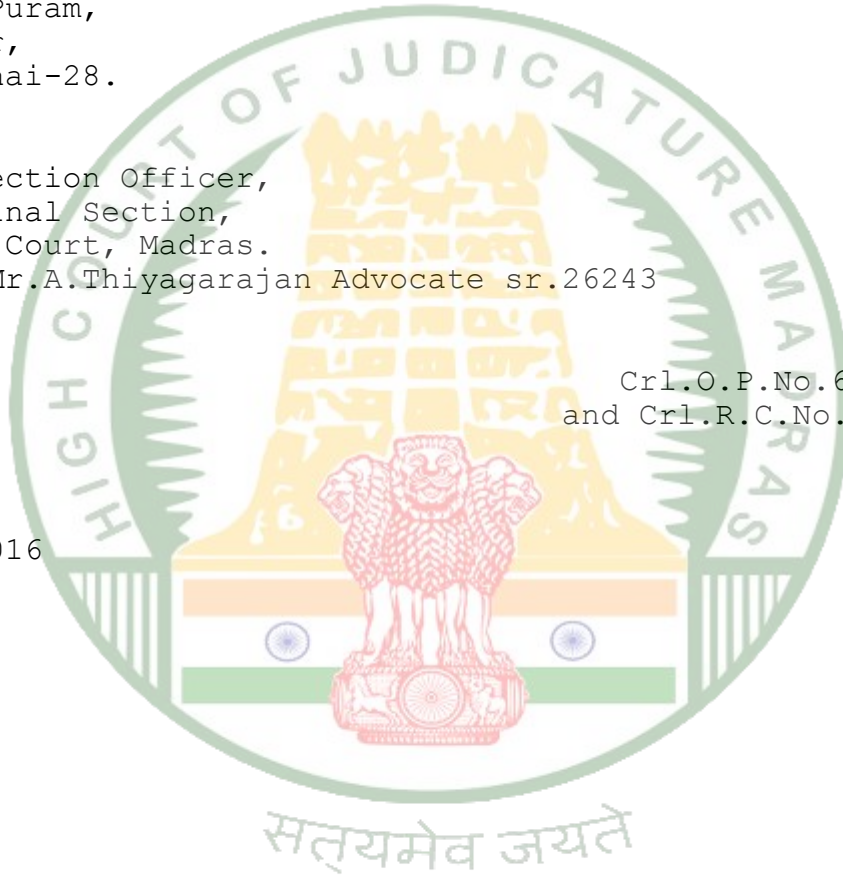
1. The Director,
Tamilnadu State Judicial Academy,
R.A.Puram,
Adyar,
Chennai-28.

2. The Section Officer,
Criminal Section,
High Court, Madras.

+1 cc to Mr.A.Thiyagarajan Advocate sr.26243

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and Crl.R.C.No.132 of 2016

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