



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.06.2016

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

C.R.L.RC(MD) No.401 of 2015

and

M.P.(MD) No.1 of 2015

R.Rengarajan

... Petitioner/Petitioner

-vs-

A.Vasudevan

... Respondent/Respondent

PRAYER: Criminal Revision Petition is filed, under Section 397 r/w 401 Cr.P.C., to call for the records and to set aside the Order dated 16.07.2015 in Cr.M.P.No.5285 of 2014 in C.C.No.139 of 2011, on the file of the Judicial Magistrate Court No.II, Srivilliputhur, Virudunagar District and remand the matter back to the said Court.

For Petitioner: Mr.T.Lajapathi Roy

For Respondent: Mr.P.Subbaraj

ORDER

This revision arises out of dismissal of a discharge petition in Cr.M.P.No.5285 of 2014 in C.C.No.139 of 2011, on the file of the learned Judicial Magistrate No.II, Srivilliputhur.

2. The complaint in C.C.No.139 of 2011 is presented under Section 200 Cr.P.C. The learned Magistrate conducted enquiry under Section 202 Cr.P.C. Taken cognizance. Issued summons under Section 204 Cr.P.C., to the accused. Copies under Section 208 Cr.P.C., has been supplied.

3. At this juncture, the accused filed Cr.M.P.No.5285 of 2014, under Section 245(2) Cr.P.C., to discharge him from the case.

4. The learned Magistrate, considering the averments in the discharge petition and averments in the counter, dismissed the discharge petition. That is how, this revision by the accused.

5. According to the learned counsel for the petitioner, there is no ground to proceed as against the accused, he should have been discharged. However, he has not been discharged. Thus, the impugned order is unsustainable in law.



6. On the other hand, the learned counsel for the respondent / complainant would contend that there is *prima facie* case against the accused. The Trial Court has rightly dismissed his discharge petition.

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7. I have anxiously considered the rival submissions, perused the impugned order and also the materials on record.

8. Under the Code of Criminal Procedure, there are two major classifications of criminal cases, namely, "police case" and "private case". Among them, there are further classifications, namely, warrant-case, summons-case, summary-trial case and sessions case. All these type of cases may arise out of police case and also private case.

9. So far as a police case is concerned, it is instituted on a police report under Section 173 Cr.P.C. After supply of copies, under Section 207 Cr.P.C., accused can seek discharge from the case. That will be dealt with under Sections 239, 240 Cr.P.C. There is no discharge in summons-cases. Likewise, in a private-case, there is a provision for discharge of the accused from the case.

10. However, there is major distinction as regards discharge of an accused from a warrant-case instituted upon a police report and a warrant-case instituted upon a private complaint filed under Section 200 Cr.P.C. In the warrant-case instituted upon police complaint, the Magistrate has to consider the Final Report, statement of witnesses recorded under Section 161 Cr.P.C., documents, if he feels necessary he can examine the accused also and if he finds the charges (allegations) are groundless, he can discharge the accused under Section 239 Cr.P.C., or frame charges under Section 240 Cr.P.C. However, in a case instituted upon a private complaint, the procedure for charge or discharge is completely different from a police case.

11. A close reading of Section 245(2) Cr.P.C., would show that in a warrant-case instituted upon a private complaint, after recording evidence, discharge petition can be entertained. That is how, it is stated that in a police case there will be only one cross-examination. However, in a private complaint case, there will be two cross-examinations. In a police case, trial commences on issuing copies under Section 207 Cr.P.C. But, in a private complaint case, trial will commence only after framing charges under Section 246 Cr.P.C., that will be only after recording evidence under Section 244 Cr.P.C. While recording preliminary evidence under Section 244 Cr.P.C., the accused can cross-examine the witnesses then and there or he may defer the cross to be done after framing of the charges. After framing of charges, again the



accused can cross-examine the witnesses. That is how, in a private complaint case, the accused will have two cross-examinations. But, it is pertinent to note that at this stage the quantum of evidence adduced is not the choice of the accused, it is the choice of the complainant, which would be sufficient to frame charges in the opinion of the complainant. Section 245(1) Cr.P.C., begins with the words that "if upon such consideration". It shows that the Magistrate should consider the evidence adduced under Section 244 Cr.P.C. and if he sees that no case has been made out against the accused, that is, if unrebutted it would not warrant a conviction, there is *prima facie* case, then he will discharge the accused from the case under Section 245(1) Cr.P.C. Otherwise, he will frame a charge under Section 246(1) Cr.P.C.

12. It is pertinent to note that under Section 245(2) Cr.P.C., at any previous stage of the case, if the charge is groundless, he can discharge the accused. So also at any previous stage of the case, if there is a ground for presuming that the accused has committed an offence, the Magistrate can frame charge. But, it is always advisable to proceed under Section 245(1) or 246(1) Cr.P.C., after Section 244 Cr.P.C., evidence is tendered. It will enable the Court to consider both side cases and render justice.

13. In criminal trials, benefit of doubt always goes in favour of the accused. However, at the stage of framing charges, if the materials produced raises a doubt, it is enough to frame charges. At this stage, the Court must see whether the accused might have committed the offence and not whether he has committed the offence. So, at this stage the benefit of doubt goes in favour of the prosecution.

14. Now, keeping the above principles in our mind, let us approach this case.

15. This case is instituted upon a private complaint for offences under Sections 406 and 409 I.P.C. They are warrant-offences. As stated above, as per Section 245(2) Cr.P.C., evidence under Section 244 Cr.P.C., has to be adduced. That has to be considered by the Court whether there is ground to proceed further. But, in this case, without examining the witnesses, purely based on the allegations in the discharge petition and in the counter filed by the complainant, the Trial Court has dismissed the discharge petition filed under Section 245(2) Cr.P.C. The procedure adopted by the learned Magistrate is not in accordance with law. While dismissing the discharge petition, the Trial Court has not followed the salient procedures prescribed in Sections 244, 245 Cr.P.C.



16. It is ordered as under:

- (i) The impugned order, dated 16.07.2015, passed in Cr.M.P.No.5285 of 2014 in C.C.No.139 of 2011, by the learned Judicial Magistrate No.II, Srivilliputhur, Virudunagar District, is set aside.
- (ii) In the interest of justice, the entire case in C.C.No.139 of 2011, together with Cr.M.P.No.5285 of 2014 is transferred to the Court of the learned Judicial Magistrate No.I, Srivilliputtur.
- (iii) The learned Judicial Magistrate No.I, Srivilliputtur, will dispose of the discharge petition in accordance with law, following the procedures mandated in Section 245 Cr.P.C., after giving opportunity to both sides.

17. Accordingly, this criminal revision is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To:

1.The Chief Judicial Magistrate,
Srivilliputhur.

2.The Judicial Magistrate No.I,
Srivilliputhur, Virudunagar District.

3.The Judicial Magistrate No.II,
Srivilliputhur, Virudunagar District.

+1cc to Mr.T.Lajapathi Roy, Advocate Sr.No.28366

+1cc to Mr.P.Subbaraj, Advocate Sr.No.28111

krk

AA/SKS-RR/16.06.2016/4p-6c

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