

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2017

Coram

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl. Revision Case No.37 of 2014

The Assistant Commissioner of Customs,  
Customs Division,  
Cuddalore.

... Petitioner/Complainant

//vs//

Karan @ Kannan @ Muthuvel  
@ Gunasekaran.

... Respondent/Accused

**Prayer:** Criminal Revision Petition filed under Section 397 read with 401 of the Code of Criminal Procedure praying to set aside the order dated 01.06.2007 in C.C.No.115 of 1995 passed by the learned Judicial Magistrate, No.I, Vellore.

For Petitioner : Mr.B.Babu Manohar  
Senior Standing Counsel for Customs

For Respondent : Mr.Kalyanaraman  
Appointed as Amicus Curie

**ORDER**

This criminal revision has been filed against the order of discharging the respondent/accused under Section 245 (2) of the Cr.P.C.,

2. The petitioner is the complainant in this case. Earlier, in the year 1993, the petitioner had filed a complaint against the respondent/accused for an offence under section 135(1)(a)(i) of the Customs Act and the learned Judicial Magistrate No.I, Vellore, took cognizance of the offence in C.C.No.115 of 1995 on 05.03.1995 and summons were issued to the accused. Since the accused is a Srilankan national, he was absconding and his presence could not be secured and a non bailable warrant has been issued against the accused.

3. In the above circumstances, the court below discharged the respondent/accused invoking Section 245 (2) of Crl.P.C. stating that even after 12 years, warrant cannot be executed against the accused/respondent. Challenging the same, this revision has been filed.

4. Since notice was not served on the respondent/accused Karan @ Kannan, this Court appointed Mr.Kalyanaraman, as a legal aid counsel for the respondent.

5. Mr.B.Babu Manohar, the learned counsel appearing for the petitioner submits that the respondent is a Srilankan national and earlier a case was registered against him under TADA Act for carrying explosive substances, and thereafter he was acquitted. Challenging the same, S.L.P. was filed and the same is pending before the Hon'ble Supreme Court and after acquittal, the respondent being a Srilankan National was sent to a Special Camp at Thippu Mahal at Vellore, and detained in the camp from 26.07.1994. Thereafter, the respondent along with some other Srilankan Nationals escaped from the Special Camp by digging tunnel on 15.08.1995, and till date, the police could not apprehend the respondent/accused. In the above circumstances, a Non-bailable warrant has been issued and the respondent could not be apprehended, without considering the same, the court below discharged the respondent/accused invoking the provisions of Section 245(2) Cr.P.C.

6. Mr.Kalyanaraman, learned legal aid counsel appearing for the respondent also fairly conceded that the Magistrate cannot discharge the accused invoking Section 245(2) Cr.P.C on the ground that the accused is absconding and could not be apprehended. He further submit that under Section 245(2) Cr.P.C., the Magistrate can discharge the accused only based on the records that he came to a conclusion that the charges to be groundless. But, he has no power to discharge the accused invoking the above provision for the reason mentioned in the order.

7. I have heard the rival submissions and perused the materials available on records carefully.

8. As rightly contended by the counsels , the power under Section 245 Cr.P.C can be invoked to discharge the accused if the Magistrate considering all the materials on record come to a conclusion that no case has been made out and the charges to be groundless. But, the Magistrate cannot discharge the accused on the ground that the accused is absconding for a long time by invoking the above section. Hence, the impugned order passed by the court below is illegal and it is liable to be set aside.

9. Accordingly, this Criminal Revision Case is allowed.

10. While parting with the case, I appreciate the services rendered by Mr.M.kalyanaraman, learned counsel who appeared on behalf of the respondent/accused, as Legal Aid Counsel. The Legal Services Authority is directed to pay his remuneration.

20.04.2017

mrp

Index : yes /no

Internet : yes/no

Speaking order/Non-speaking order

To

The learned Judicial Magistrate No.I,  
Vellore District.

V.BHARATHIDASAN, J.

mrp

Crl. R.C.No.37 of 2014

20.04.2017

<http://www.judis.nic.in>