

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

Date of Reservation : 30.11.2016

Date of Pronouncement : 01.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Revision Case No.716 of 2015

1.Ramadoss

2.Chinnadurai

.... Petitioners/A12 & 13

versus

State represented by

The Deputy Superintendent of Police,

CBI, SCB, Chennai.

... Respondent/Complainant

Prayer: Criminal revision petition filed under Section 397 read with 401 of Cr.P.C., to set aside the order dated 18.04.2015 passed in C.M.P.No.2870 of 2014 in S.C.No.185 of 2010 by the Principal Sessions Judge, Cuddalore.

For Petitioner : No Appearance

For Respondent : Mr.K.Srinivasan, S.P.P. For CBI cases

ORDER

The criminal revision case has been filed by the petitioners/A12 and A13, to set aside the order dated 18.04.2015 passed in C.M.P.No.2870 of 2014 in S.C.No.185 of 2010 by the Principal Sessions Judge, Cuddalore.

2.The case of the prosecution is that the daughter of Duraisamy/A1 viz., Kannagi and the deceased Murugesan have fallen in love with each other and they left the village on 03.07.2003 and on the advice of A1, A4/Ayyasamy brought both Kannagi and Murugesan to the village on 08.07.2003 and since A2 felt that his reputation in the village was deeply hurt, he wanted to cause the death of both Kannagi and Murugesan with the help of other accused and he hatched conspiracy with them. Thereafter, by force and threat, the accused persons compelled both Kannagi and Murugesan to consume poison and as a result of which, both of them died on the spot and their bodies were cremated. Even though, the villagers did not prefer any

complaint, due to mental stress, A1 himself has preferred a complaint before the Inspector of Police, Virudhachalam on 17.07.2013 and the same was registered in crime No.356 of 2003 and after investigation, final report was filed before the jurisdictional Magistrate against the accused A1, A2, A3, A16, A17(died), A18, A4 and A19 for the offences under Sections 147, 302 and 201 of I.P.C. In the meanwhile, A17, A18 and A4 preferred a petition before this Court in CrI.O.P.Nos.31572, 31850 and 31851 of 2003 and this Court directed to re-investigate the matter and therefore, the present respondent took up the investigation on 21.05.2014 and after completing the investigation, the present respondent filed final report against all the 19 accused including the petitioners and the case is now pending before the learned Principal Sessions Judge, Cuddalore in S.C.No.185 of 2010. Since the petitioners herein along with 17 others were charged for the offences under Sections 120(B) read with 147, 323, 347, 364, 302 and 201 of I.P.C. and also under Sections 3(1)(i) and (2)(v) of SC/ST Act, the petitioners/A12 and 13 filed discharge petition in C.M.P.No.28709 of 2010 raising various grounds. The learned Principal Sessions Judge, after hearing both side and considering the documents available on records, dismissed the discharge petition filed by the petitioners. Against, which, the present criminal revision case has been filed.

3. According to the petitioners, during the investigation, the CBCID examined 81 witnesses and as far as these petitioners are concerned, they were not implicated specifically for any particular offence. Even according to the prosecution, the petitioners were present near the scene of occurrence, where Murugesan was confined and along with these petitioners, so many villagers were also present. The earliest complaint given in this case do not disclose their names, since they had not participated in the alleged incident. In fact, these petitioners reliably learnt on enquiry from the villagers that Kannagi and Murugesan died not due to administering poison by the accused, but, they themselves committed suicide. Though the prosecution witnesses named these petitioners, the statements recorded under Section 161 of Cr.P.C., do not reveal any offence. Therefore, the statements are vague and it implicate the almost the entire villagers and it looks artificial and unbelievable. On consideration of the records and documents submitted by the prosecution, there are no sufficient grounds for proceeding against these petitioners in this case and hence, the revision petition has to be allowed.

4. The learned Special Public Prosecutor appearing for the respondent would submit that these petitioners are arrayed as A12 and A13 based on the oral evidence of L.Ws.1,3,6 to 8, 20, 22, 24 to 35, 39 and 40. A7 has brought Murugesan from

Vannankudikadu on 07.07.2003 and handed over the custody of Murugesan to A2 and tortured him along with other accused viz., A1, 3, 7, 5 and 6, Mani, Gunasekaran, A10, 11, 12, and Chinnadurai in the presence of other village boys. The oral evidence of witnesses would show that A2, after giving poison to his sister Kannagi, took the bottle of poison and the glass to the place, where Murugesan was detained 50 meters away by A7 and Gunasekaran under the supervision of A5, 12, 13 and Mani, A2 and then poured the remaining poison in the same glass and handed over to A7 with instruction to give it to Murugesan and the same was forcibly given by A7 to Murugesan, as a result of which, Murugesan and Kannagi died. Therefore, from the oral and documentary evidence produced with the charge sheet filed under Section 173 of Cr.P.C., there are prima facie materials against these petitioners and the trial Judge, has considered all the aspects in a proper manner and dismissed the discharge petition filed by the petitioners and the said order does not warrant any interference of this Court.

5. When the matter was called on 30.11.2016, there was no representation on behalf of the petitioner. Since the occurrence took place in the year 2003, this Court heard the learned Special Public Prosecutor appearing for the respondent and perused the materials available on record.

6. On a careful perusal of the charge sheet filed under Section 173 of Cr.P.C. along with other material documents and dismissal order of the learned Principal Sessions Judge would show that there are incriminating materials to proceed against the petitioners and other accused. In the above facts and circumstances, at this stage, the trial Court is not expected to conduct a roving enquiry on the material on records.

7. At the stage of framing of charge, what the Court has to see is whether the material brought on record would reasonably connect the accused with the crime. No more is required to be inquired into. Only prima facie case is to be seen, the question whether the charges have been proved or not can be determined only after the evidence is recorded in this case. For framing of charge, the Judge has to consider judicially whether on consideration of the materials on record it can be said that the accused can be reasonably connected with the offence and that there is a reasonable probability or chance of the accused being found guilty. If the answer is affirmative, the Judge will be at liberty to frame a charge against the accused. No weight to be attached to the probable defence of the accused. In a case instituted upon a police report, the Court is required at the time of framing of the charges, to confine its attention to documents referred to under Section 173 of Cr.P.C., only. The Court is not justified in

referring to documents relied on by the accused when their authenticity and veracity are yet to be gone into. The documents filed by the defence cannot be considered in framing charge.

8. Further, it is well settled principles of law that at the time of considering the discharge petition before framing of charges, the Court ought to have seen whether there is any prima-facie case made out for framing of charge and the Court need not to conduct any roving enquiry regarding the oral and documentary evidence collected by the prosecution. The Principal Sessions Judge, considering all the materials collected during the investigation found that there is prima facie case as against the petitioners and other accused to frame the charges. The validity and admissibility of the oral and documentary evidence can be done only after the trial and not at the stage of framing of charges and at the time of framing of charges, the probative value of the material on record cannot be gone into. Therefore, I am of the view that the trial Court has correctly come to the conclusion that there is prima facie case made out as against the petitioner and others to frame charges and at this stage, there is no reason to interfere with the order passed by the Principal Sessions Judge by exercising the revisional jurisdiction under Section 397 read with 401 of I.P.C.

9. At this stage, it is worthwhile to refer the decision of the Hon'ble Supreme Court reported in 2017-CRI.L.J.1433 - State of Rajasthan V. Fatehkaran Mehdu, wherein, the Apex Court has dealt with the same issue and has held in paras 26 to 29 as follows:

"26. The scope of interference and exercise of jurisdiction under Section 397 of Cr.P.C. has been time and again explained by this Court. Further, the scope of interference under Section 397 Cr.P.C. at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with scheme of Code of Criminal Procedure.

27. Now, reverting to the limit of the scope of jurisdiction under Section 397 Cr. P.C., which vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the proceeding.

28. It is useful to refer to judgment of this Court in Amit Kapoor and Ramesh Chander and Another, (2012) 9 SCC 460, where scope of Section 397 Cr. P.C. have been succinctly considered and explained. Para 12 and 13 are as follows:

"12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits."

"13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to

injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even framing of charge is a much advanced stage in the proceedings under the CrPC."

29. The Court in para 27 has recorded its conclusion and laid down principles to be considered for exercise of jurisdiction under Section 397 particularly in context of quashing of charge framed under Section 228 Cr. P. C. Para 27, 27(1), (2), (3), (9), (13) are extracted as follows:

"27. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

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27.1) Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie."

10. Considering the facts and circumstances along with the above said decision, I am of the view that the trial Court has correctly come to the conclusion that there is prima facie case made out as against the petitioner and others to frame charges and there is no imperative or illegality in the order passed by the learned Principal Sessions Judge and the same does not

warrant any interference by this Court, by exercising the revisional jurisdiction under Section 397 read with 401 of Cr.P.C. and this criminal revision fails and the same is liable to be dismissed.

11. In the result, this criminal revision case is dismissed. The order dated 18.04.2005 passed by the trial Court in C.M.P.No.2870 of 2014 in S.C.No.185 of 2010 is confirmed. Since the occurrence took place in the year of 2003, the trial Court is directed to frame the charge immediately, if not already framed and further directed to dispose the case in accordance with law, within four months from the date of receipt of a copy of this order. The Registry is directed to forward the copy of the order immediately, provided within one week. After receipt of the same, the trial court is directed to report the same to this Court immediately with acknowledgement failing with the same will be viewed seriously.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Deputy Superintendent of Police,
CBI, SCB, Chennai.
2. The Principal Sessions Judge,
Cuddalore.
3. The Special Public Prosecutor,
CBI Cases
High Court
Chennai-104.

Copy to:

The Section Officer,
Criminal Section, High Court,
Madras-104

Criminal Revision Case No.716 of 2015

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NR(02/06/2017)